

Independent expert report to the High Court

IN THE MATTER OF AGPS BONDCO PLC
AND IN THE MATTER OF THE COMPANIES ACT 2006

Assessment of Insolvency Discounts

Date of Issue: 24/03/2023

Claim No. CR-2023-000936

In the High Court of Justice

Business and Property Courts of England & Wales

Insolvency and Companies List (ChD)

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1 Introduction and instructions

1.1 Expert's background and summary of relevant experience

- 1.1.1 My name is Frank Günther. I trained as a banker, have a degree in business administration (Diplom-Kaufmann), and am a shareholder, founder, and managing director of One Square.
- 1.1.2 Before joining One Square Advisors, I held senior positions at Booz Allen & Hamilton (now PWC), Citibank, Salomon Smith Barney and Morgan Stanley.
- 1.1.3 I have over 25 years of restructuring experience and specialise in insolvency and financial restructuring.
- 1.1.4 For the past five years, I have headed One Square's real estate business and am also a managing director of One Square Real Estate GmbH, a company within the One Square Group specialising in selling real estate out of insolvency.
- 1.1.5 Over the last five years, I completed approximately 40 transactions selling real estate out of insolvency with my team. All of these transactions took place in Germany.
- 1.1.6 Included in this Report is a description of each transaction.
- 1.1.7 In addition, I have acted in various insolvencies as CRO (in German debtor-in-possession proceedings "*Eigenverwaltung*"), as creditor representative (joint representative of bondholders under the German bond act SchVG' 09), as a member of numerous creditor committees, and as an advisor to insolvency estates.

1.2 Independence

- 1.2.1 I have no current professional connection with any of the principals or advisors, acting for either the debtor or its creditors, involved in the recent restructuring of Adler Group, as defined below. I had no professional relationship with Adler Group before this assignment.

1.3 Assistance from One Square

1.3.1 In preparing this Report, I was supported by the employees and senior advisors of both One Square Advisors GmbH and One Square Advisors Ltd. All such assistance was provided under my supervision, and this Report reflects my expert opinion.

1.4 Limitations and restrictions

- 1.4.1 This Report is strictly private and confidential and has been prepared solely for the use of the Court. It is not to be shown or copied, in whole or in part, to anyone other than the Court, the Parties and their legal and other professional advisers and experts, nor otherwise referred to, without my prior written consent and that of One Square, nor used for any other purpose.
- 1.4.2 No responsibility is accepted by One Square or by me personally to anyone other than the Court for the contents of this Report. This Report is based on the information available to me when writing it.
- 1.4.3 I reserve the right to reconsider the conclusions in this Report should further information be made available to me. However, I accept no responsibility for updating the Report nor for informing anyone of the receipt of any such new information, save for my obligation to advise those instructing me immediately if, for any reason, this Report requires any correction or qualifications.

1.5 Instructions

- 1.5.1 I have been instructed to provide my expert opinion in respect of possible discounts in real estate asset sales under the condition of German insolvency proceedings (“**Insolvency Discounts**”) and comment on the relevant sections of the following reports:
 - Amendment to the Comparator Report of Boston Consulting Group, dated 15 March 2023
 - Independent expert report of Lisa Ricketton, dated 18 March 2023
 - Expert witness report of Christoph Gerlinger, dated 18 March 2023

1.6 Definition of terms

Adler Group	Adler Group S.A. and its direct and indirect subsidiaries
AGPS or Plancompany	AGPS BondCo PLC
BCG	Boston Consulting Group
BCP	Brack Capital Properties
BGB	German Civil Code
BGH	German Federal Supreme Court
BNP RE	BNP Paribas Real Estate
CRO	Chief Restructuring Officer
EnEV	German Energy Saving Ordinance
FTI	FTI Consulting
GAV	Gross Asset Value
Gerlinger Report	The Christoph Gerlinger Expert Witness Report dated 18 March 2023
GKG	German Court Costs Act
GrEStG	German Real Estate Transfer Tax Act
InsO	German Insolvency Code
InsVV	German Insolvency Remuneration Ordinance
IRR	Internal rate of return
LEG	LEG Immobilien
LTV	Loan to value
NPL	Non performing loan
Original Issuer	Adler Group S.A.
OSA	One Square Advisors
Plan or RP	Restructuring Plan according to Part 26A of Companies Act 2006
RETT	Real estate transfer tax
Rickelton Report	The Lisa Rickelton independent expert report dated 18 March 2023
SchVG	German Debenture Bond Act
SUNs	Senior unsecured notes
TAG	TAG Immobilien
W&I	Warranty & Indemnity
ZVG	Compulsory Auction Act

2 Executive summary

2.1 I have been instructed to prepare an expert report on possible discounts on property sales under the condition of German insolvency proceedings.

2.2 On the basis of 47 property sales transactions, which I have been directly involved in over the past few years, I have identified eleven differences of sales processes conducted under solvent conditions, on the one hand, and in German insolvency proceedings, on the other hand:

- I. Time available
- II. Image / Interested parties / Investor universe
- III. Public data/data access
- IV. Exclusivity
- V. Condition of the property
- VI. Warranties/guarantees
- VII. Real estate transfer tax / RETT blocker
- VIII. Liability of the insolvency administrator
- IX. Influence of secured creditors
- X. Costs of the sale
- XI. An influx of sale proceeds

2.3 Taking into account the effects of these differences, I have come to the conclusion that, when selling a property in German insolvency proceedings, a reduction in proceeds of between 15 % and 40 % can be expected compared to the fair market value in sales transactions under solvent conditions. The spread of results is considerable; in individual cases the discount might be significantly lower and occasionally higher.

2.4 Considering the assumptions made in the Comparator Report, which puts the average discounting effect at around 25%, I believe this to be reasonable assumption across the Adler Group portfolio at large adding that discounts will likely vary considerably in individual cases.

2.5 In respect of a scenario, in which a LTV event of default occurs and a bidding vehicle, controlled by the SUNs, will assume control of Adler Group and continue unwinding its property portfolio, I believe that no Insolvency Discounts would be applicable on this occasion.

3 Key factual background

- 3.1 AGPS BondCo PLC ("AGPS", "Plan Company") is the debtor under six bonds, assumed from and initially issued by Adler Group S.A. ("Original Issuer"). AGPS is a wholly-owned subsidiary of the Original Issuer.
- 3.2 The Original Issuer is a listed stock corporation incorporated under the laws of Luxembourg operating in the real estate sector and whose principal business activities are conducted through subsidiaries in Germany (the "Group"). The Issuer is principally involved in the rental and management of flats via its subsidiary Adler Real Estate AG and in project development via its subsidiary Consus Real Estate AG.
- 3.3 The Original Issuer issued six senior unsecured notes ("SUNs"), including the 2029 senior unsecured notes, with a total volume of approximately €3.2 billion for its general corporate financing purposes, including real estate financing.
- 3.4 The Plan Company is a U.K.-incorporated company. It commenced proceedings in the English High Court on 20 February 2023 under Part 26A of the Companies Act 2006 for sanction of a restructuring plan (the "Plan") which proposes (amongst other things) to amend the terms of the SUNs.
- 3.5 According to the Plan Company, the most likely alternative outcome to sanction of the Plan would be, amongst formal insolvency proceedings in other jurisdictions of some group members, formal German insolvency proceedings of the group entities directly owning real estate in Germany ("Relevant Alternative").

4 Market fundamentals and recent conditions

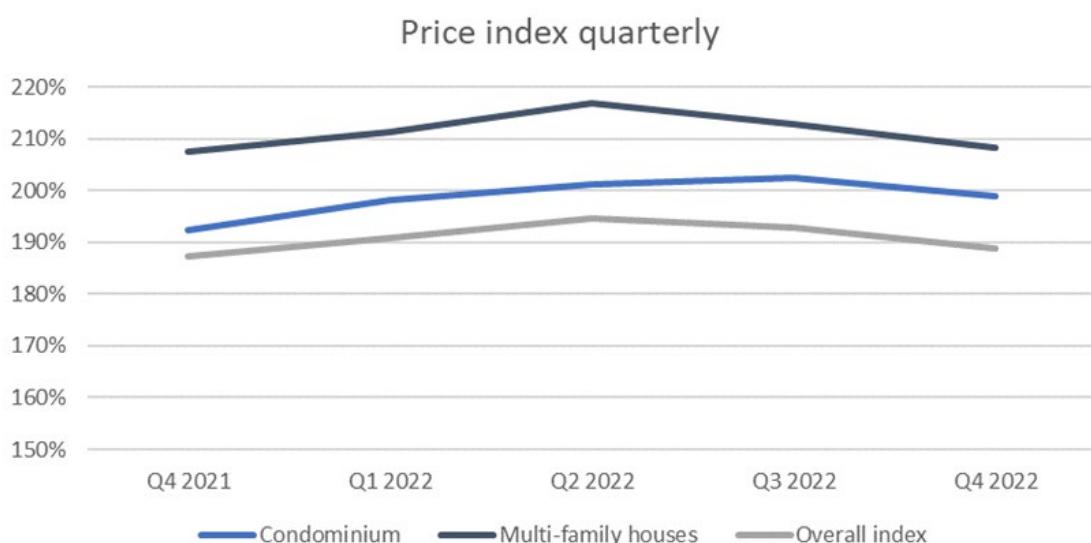
- 4.1 Key factors determining prices achieved for residential real estate assets
 - 4.1.1 Portfolio transactions, bigger development deals and Real Estate M&A is priced using DCF procedures, which are based on the data room und the due diligence.
 - 4.1.2 If the sale of the project in insolvency is done by foreclosure/public auction (*Zwangsvorsteigerung*) the necessary appraisal (*Verkehrswertgutachten*) normally uses discount cash flow methods yet with less degree of freedom in the parameters, resulting in usually slightly lower values.
 - 4.1.3 General Reps and Warranties are similar to general M&A deals.
 - 4.1.4 Real estate/deal specific warranties are used to ensure the valuation obtained in the process and are project specific.
 - 4.1.5 Lack of Reps and warranties represent a risk, which is individually evaluated by the bidder.

- 4.1.6 Certain investors (Third part asset managers) need certain reps and warranties according to their mandate/investment rules.
- 4.1.7 Insurable risk in development projects are the completion risk and the technical warranty after the completion.
- 4.1.8 Insurance premiums for those risk in normal cases are around 1 % of the project value and rise up to 3 % or might not be insurable in insolvency cases.
- 4.1.9 As the lack if reps and warranties represent an additional risk the financing of those deals can be more complex (covenants, securities etc.) and/or more expensive.

4.2 Conditions in the German real estate market

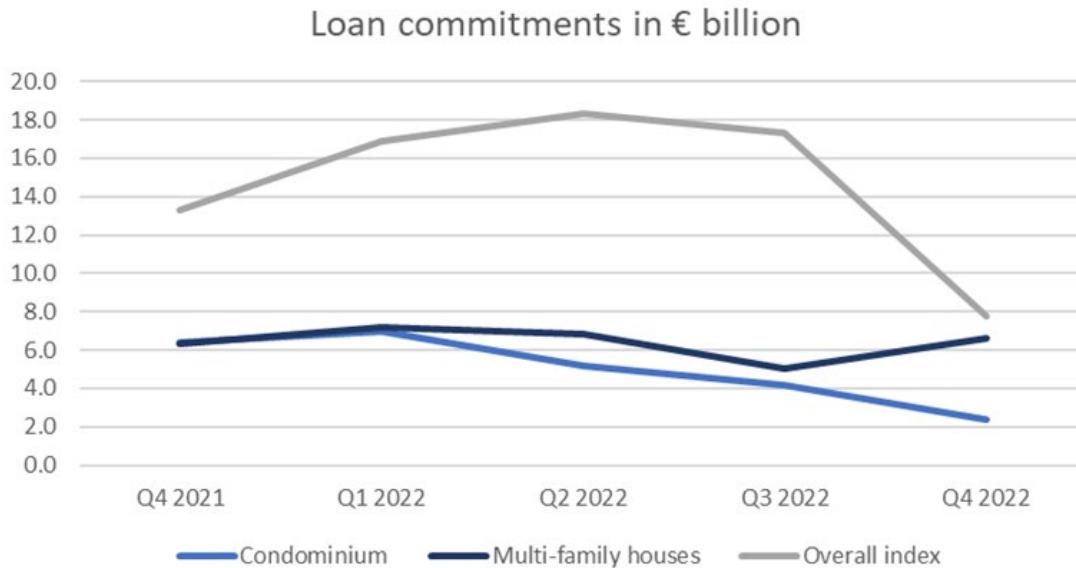
Current developments

- 4.2.1 Since 2010, the German real estate market has experienced a phase of an almost uninterrupted upswing, mainly driven by falling and, subsequently, permanently low-interest rates. This state of the market has been widely reviewed and commented on and I shall not opine on it further. With the rise in interest rates from Q2/22, the development came to a rather abrupt halt.
- 4.2.2 Although the data for the whole year of 2022 still shows a slightly positive trend, a look at the quarterly data for the year reveals the abrupt breaking in the course of the year, triggered by the rise in interest rates in the 2nd quarter from below 2 % to over 4 %:

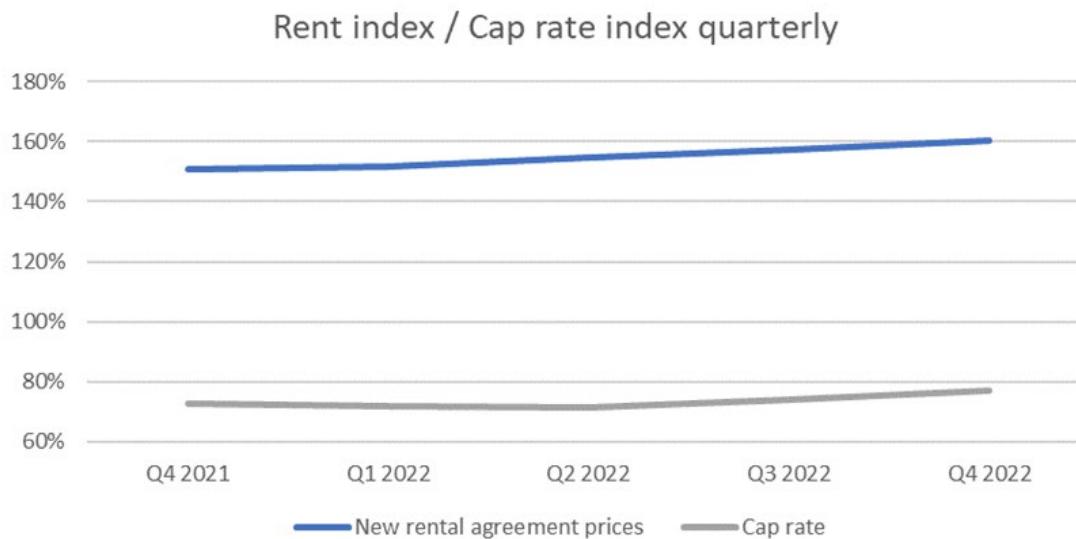


- 4.2.3 Trend break in mid-2022¹

¹ Based on data from vdp expertise , vdp property price indices



4.2.4 Slump in financing shows slump in transactions²



4.2.5 Rents continue to rise, cap rates no longer fall.³

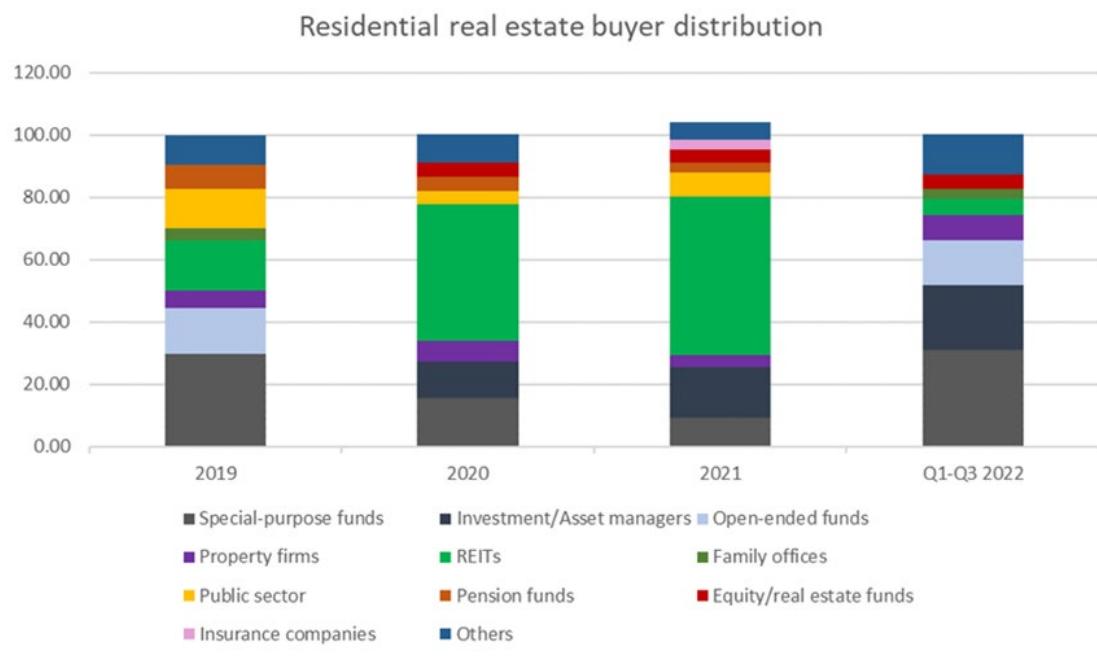
4.2.6 In particular, the sharp decline in financing underscores the weakness of the transaction market. The estimated volume of residential portfolio sales ⁴ also rose from just over €10bn to €20bn p.a. between 2013 and 2020, with a jump to around €50bn in 2021 (distorted by Vonovia's purchase of Deutsche Wohnen). In 2022, sales halved to 10 billion by Q3 compared to the same quarter last year, with the largest transactions being the sale of the Adler portfolios. Very noticeably, sales of existing portfolios fell to only 23% of total investment by Q3/22 compared to Q3/21 of 69%, whereas previously existing portfolios had the largest share.

² Based on data from Verband Deutscher Pfandbriefbanken, vdp statistic on loan business

³ Based on data from vdp expertise GmbH, vdp property price indices

⁴ BNP Paribas Real Estate Wohnimmobilien Investment Deutschland Q3/2021 und Q3/2022

4.2.7 Due to the increased financing costs, which in any case are above 4%, opportunistic investors and investors who rely on greater debt financing are eliminated as buyers. The chart ⁵ below clearly shows that the listed housing companies have practically dropped out from 2022 onwards (even if 2021 was distorted by the Deutsche Wohnen deal) and the rising share among funds and investment managers, which usually manage mandates from institutional investors (insurers, pension funds).



4.2.8 The investors emerging in this market phase (family offices, funds, investment managers) accept the low yields. However, due to their nature (family offices) or regulation (funds), they are safety-oriented and conservative investors who generally do not engage in M&A processes or purchases from insolvencies. Traditionally, these buyers are purchasers of developments and good-quality existing portfolios.

4.2.9 In contrast to investment, demand for rental apartments shows no signs of weakness, as seen from the continued rise in rents. The weak demand for condominiums and the ongoing demographic trend suggests that demand will remain unbroken. Due to the weak demand for residential property, residential investment as well as the development of construction costs above the inflation rate (construction price index approx. +17% in 2022), building permits are declining (stagnation in 2022 for multi-family houses and a slump of 26% in January 2023)⁶; the construction backlog (approved but not yet completed projects) of approximately 800,000 apartments is increasing.

4.2.10 The negative current sentiment in the market is directly underlined by the recent development of the sentiment indicators of real estate financiers by Bulwien Gesa/B.F. The value fell from slightly above 0 (balanced) in mid-2021 to a negative

⁵ Statista GmbH residential real estate investments in Germany by buyer group

⁶ Statistisches Bundesamt Baugenehmigungen für Wohnungen im Januar 2023

record value of -19,5 (previous fluctuation range of the index collected since 2012 +/- 15). This suggests difficult financing conditions, placing an additional burden on the market.

4.2.11 The financing conditions might be negatively impacted by additional action by the macroprudential banking regulations (additional capital, reporting, higher credit standard). This can be triggered by mounting foreclosures or insolvency case of bigger real estate companies.

Outlook

4.2.12 Rising rents, demographic trends, and declining building permit all point to an inherently healthy and high demand for housing. Due to an unusually long period of extraordinarily low-interest rates, this demand has led to unusually high prices and, subsequently, to meager returns on residential investments. Following the abrupt rise in interest rates and the steady increase in inflation, these prices are no longer feasible despite the demand since, on the one hand, the expected returns on investments are rising. On the other hand, financing costs are higher than current yields. This leads to falling affordability in the case of private demand, a narrowing of institutional demand to equity-rich investors, and the loss of leveraged, opportunistic investors. This is the reason why 2023 will be a year of adjustment.

4.2.13 Therefore, under normal conditions, it can be assumed that this adjustment will end at the end of 2023/beginning of 2024 and return to an average positive development reflecting the fundamental demand and corresponding to the new circumstances in the financing and investment market.

4.2.14 As insolvency discounts are negatively correlated with the general price development (discounts rise when prices fall as shown in 5.2.7), sales from insolvencies might suffer higher discounts under weaker market conditions.

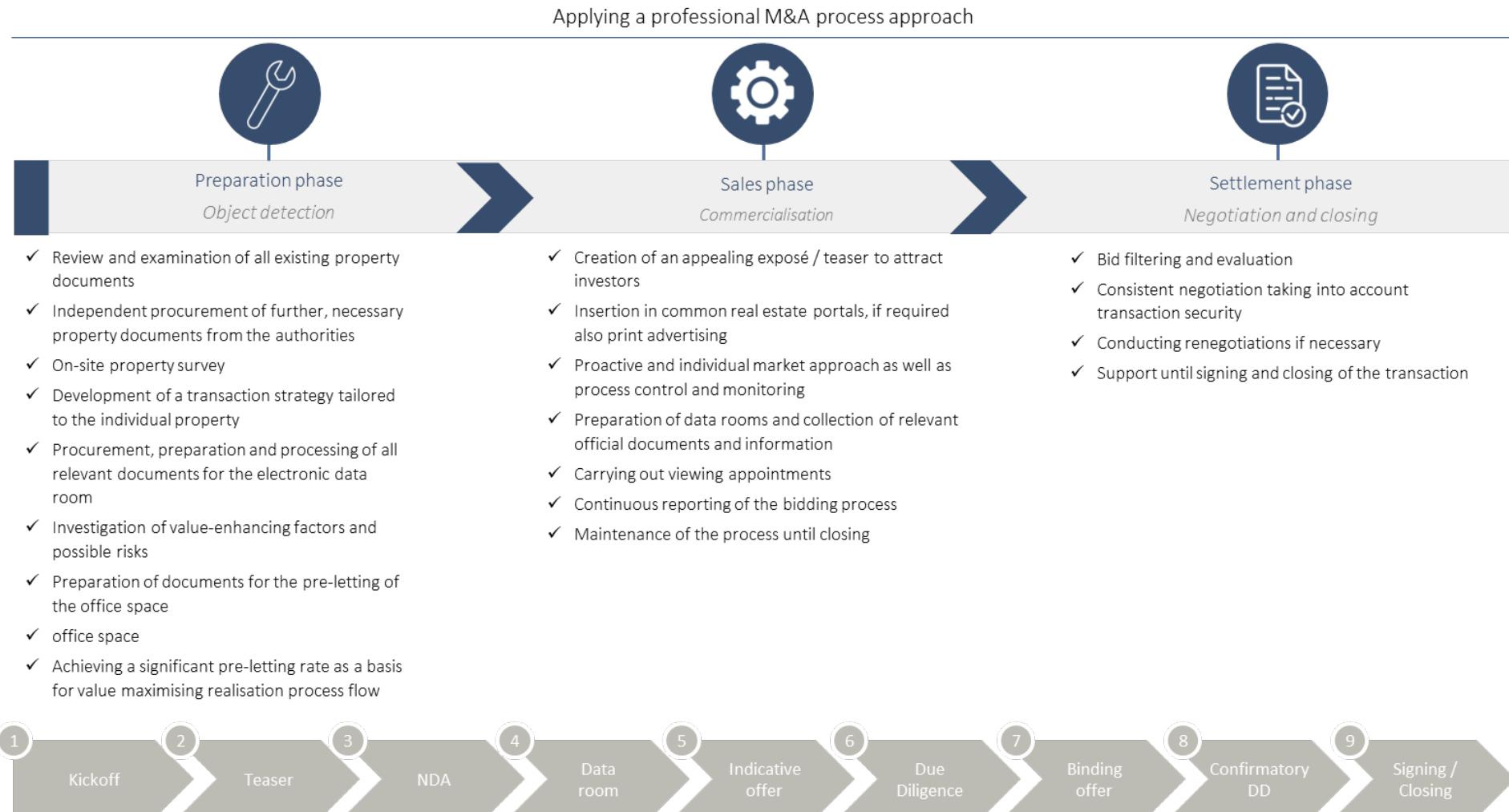
5 Differences between disposal processes of real estate under solvent conditions and in German insolvency proceedings

In the following section, I address the differences in certain real estate disposal processes. Specifically, I compare a sale in the context of formal insolvency proceedings under German law, and a solvent liquidation.

5.1 Description of disposal processes

- 5.1.1 The following refers specifically to the sale of residential property. the basic process is the same in the context of insolvency proceedings and solvent liquidation. In section 5.2, I will discuss the specific differences between the two methods.
- 5.1.2 The process of selling a property can be divided into three phases:
 - I. Preparation phase
 - II. Sales phase
 - III. Settlement phase

Structured marketing approach and process



Preparation phase

5.1.3 The first step is to determine the time frame for the sale of the property. It should not be underestimated that a property sale is usually complex and time-consuming. In addition, it is determined where and how the property is to be offered. The type of marketing must be tailored to the desired target group.

5.1.4 In other words, timing is essential when the property is to be offered or sold. The determining factor is the state of the real estate market, but regional factors also play a role in the timing. The time of year also plays a part: it is empirically proven that more properties are sold in summer than winter.

5.1.5 On average residential portfolio sales amounted to appr. €6.25 bn in Q1, 3.0 bn in Q2, 6.5 bn in Q3 and 10.25 bn in Q4 from 2019 to 2022.⁷

5.1.6 In Germany, a property sale requires the submission of a range of documents. The most important are the land register, the floor plan, the building encumbrance register and the property's energy certificate. In many cases, it is essential to obtain releases from public encumbrances, including from public utilities, or confirmations from public bodies that they will not exercise certain rights encumbering the land. All necessary information on tenants, rental income, rental amount, etc., is also required in renting properties.

5.1.7 Furthermore, prospective investors require information about the condition of the property, investment and renovation needs, etc. An expert opinion is often necessary for more significant properties or the sale of a portfolio. The compilation of these documents is time-consuming and often cost-intensive. It is mandatory in Germany that the sale and purchase of real property is notarized before a public notary.

5.1.8 In detail, at least the following documents are required:

5.1.7.1 Land register: Available from the land registry.

- a) The land register is one of the most critical property sales documents. It is divided into three sections. Section 1 of the land register deals with the ownership of a property. In other words, the owners of the property are listed here. Previous owners of a property can also be seen here. Section 2 of the land register mainly contains restrictions and encumbrances on the property. This concerns, among other things, the right of usufruct, limited personal easements such as residential rights or heritable building rights.
- b) Prior notices (in the case of inheritance) are also entered here, as are any insolvency or forced administration notices. Section 3 of the land register directly contains pecuniary rights, thus concerning things like the mortgage, land charge and security land charge. Changes to the entries can be viewed in the respective columns in the land register extract. Older entries that are no

⁷ Based on data from BNP Paribas Real Estate, quarterly reports on residential portfolio transactions in Germany

longer valid are crossed out or reddened. All these documents can be obtained from the responsible land registry office.

- c) In this context, it is also essential to determine the extent to which the registered collateral has been valued. For this purpose, contact must be made with the secured creditors, as an investor usually wishes to acquire real estate free of encumbrances.

5.1.7.2 Floor plan: Available from the building office.

- a) The floor plan of a property is one of the essential documents for selling a house, especially in the marketing and viewing phase. A floor plan of the property that is as detailed as possible enables potential investors to assess whether the property meets their needs realistically. The chances of finding a relevant prospective investor more quickly, therefore, increase if you can present the floor plan at an early stage. You will need methods of the building at the latest when signing the notary contract to process the sale.
- b) You can obtain the floor plan of your property in various ways: The most common method is to look at the building file of the property, which contains the floor plan. The building file documents are usually stored in the archives of the relevant building authority. Another method is commissioning a professional architect or planner to draw the property.

5.1.7.3 Residents' certificate: Available from the municipality.

- a) The documentation for the certificate of the annexation of the property shows whether all costs for the development of a property have already been paid off. Development measures include, for example, the connection to water and electricity lines and roads. For this reason, the residents' certificate is of particular interest when selling a property in new housing estates.
- b) However, these documents can also be necessary for older housing estates. Sometimes development measures are taken that are only invoiced later by the municipality. When billing, the person or firm who owns the property is always liable for these costs. Suppose the property changes hands when the development has not yet been completed. In that case, the investor and new owner must bear the costs, even if the development measures were completed before the purchase.

5.1.7.4 Building encumbrance register (*Baulastenverzeichnis*): Available from the land surveying and cadastral office (state institution or authority that is responsible for important administrative tasks).

- a) In addition to the encumbrances on a property listed in section 2 of the land register, public-law payment obligations are listed in the building encumbrance register. For example, such building encumbrances may exist due to a distance from neighbouring properties. Limitations in the building encumbrance register

are generally not entered in the land register. The federal states of Brandenburg and Bavaria are an exception.

- b) The city or district usually keeps the building encumbrance register for a property, and the documents can then be obtained from the relevant land registry office. Although the presentation of the register of building encumbrances is not a mandatory document for the sale of a house, the investor(s) usually demand to see this document. In such a case, the land registry office must request the register of building encumbrances.

5.1.7.5 Energy certificate: Available from the energy supplier (consumption certificate) or the building's engineer (demand certificate).

- a) Since 2014, any seller requires an energy performance certificate and that certificate must be available at the beginning of the marketing process. This document is regulated in the Energy Saving Ordinance, often abbreviated to EnEV. There are two types of energy certificates: the "consumption certificate" and the "demand certificate".
- b) The consumption certificate is based - as the name suggests - on the property's previous consumption values (for heating and hot water preparation, for example). It is the cheaper version of the energy certificate. This energy certificate is valid if the property contains at least five residential units (for example, rented flats) or if the building meets the 1977 Heat Insulation Ordinance requirements. These documents are sufficient for the sale of most properties.
- c) The "demand certificate" is the more complex variant of the energy certificate. Here, the energy balance of the property is not based on actual consumption values but on theoretical values calculated based on factors such as external insulation, glazing and the type of heating system. The demand certificate is mandatory if the property houses fewer than five residential units or if the requirements of the 1977 Heat Insulation Ordinance are not met. Regardless of the certificate type, an expert can only issue the energy certificate. For example, energy suppliers or energy consultants, civil engineers or architects prepare the energy certificate.

5.1.7.6 Register of contaminated sites: Environmental Agency.

This register lists all contaminated and suspected contaminated sites on a property that could endanger human health. These can be, for example, chemicals and other toxic substances that have leaked into the groundwater, but also munitions and bombs from the Second World War. Although the register of contaminated sites is not mandatory when selling a house, it is certainly a document that potential house investors request. Owners can obtain the cadastre/ register (*Altlastenkaster*) from the competent federal office.

5.1.7.7 Permission of the redevelopment authority: Notary

Under certain circumstances, prior approval from the redevelopment authority is required to sell a property. This is the case if the property is in a redevelopment area designated by the municipality. These documents are obtained - if necessary and not obtained beforehand - by a notary during the execution of the purchase contract, which may, however, mean a delay in the conclusion of the purchase.

5.1.7.8 Proof of monument protection: Monument protection authority.

If the property to be sold is a listed building, this entails some unique features. For example, any conversions or even (partial) demolition require the prior approval of the competent monument protection authority. Correspondingly, documentation of such a permit is also required.

- 5.1.9 As one might expect, the condition of the property dramatically influences the possible purchase price. If repairs are necessary, a seller will need to decide whether it is worth carrying works out before the sale. This can make the property more marketable and have a positive effect on the sales proceeds.
- 5.1.10 Setting an asking price is a challenge that should not be underestimated. There is a danger of deterring prospective investors with too high an asking price or selling the property for less than its actual value if it is too low. Therefore, a valuation report is usually prepared.
- 5.1.11 The more qualified the preparation of the sales process is, the more information on real estate and properties is compiled, appraisals are commissioned and offers for renovation measures are obtained, the higher the purchase price to be achieved will be. Depending on the volume, the time needed to prepare the information can take several weeks to months.

Sales phase

5.1.12 During this phase:

- a) An estate agent is usually instructed for marketing the property and provides support during the preparation phase.
- b) The marketing strategy is determined.
- c) To address potential investors, a “teaser” is created that contains initial information about the projects for sale.
- d) There are many ways to market a property. Sellers can directly approach large institutional investors, place classic newspaper advertisements, use online advertising, and virtual viewings. The nature of the marketing campaign depends on the target group. There are certain legal requirements at this stage - for example, every marketing material must already contain an energy certificate.

- e) A confidentiality agreement is concluded with interested parties so that they can be provided access to the data room.
- f) The core of selling real estate is conducting due diligence and viewing appointments. Both due diligence and viewings must be carefully prepared. In doing so, you must anticipate the many varied questions of interested parties and prepare the appropriate answers and information.
- g) Once one or more prospective buyers have been found, the next step is to negotiate the contract. This usually involves not only bridging different purchase price expectations but also negotiating and determining a variety of other contractual components. Finally, the seller must also carry out due diligence on the buyer (KYC) and check the creditworthiness of the potential buyer.
- h) In more substantial real estate transactions, buyers demand exclusivity for a period of several weeks after submitting indicative offers to be able to perform their due diligence. Provided the risk profile of the buyer is attractive, exclusivity is often granted in disposal processes.

Settlement phase and cost

- 5.1.13 The sale and purchase contract is the key document for the sale of real estate, and it contains all details of the sale of the property and requires notarization for a legally binding contract. For this reason, it is also colloquially referred to as a “notary contract”.
- 5.1.14 The notary appointment is the final and most crucial step in selling a property. During the notary appointment, the notary will reread the sale and purchase contract and explain any legal terms to the contracting parties. In addition, sellers and investors can ask questions about the contents of the agreement. At the end of the notary appointment, both parties sign the contract of sale of the property, which makes the deal legally binding.
- 5.1.15 The different types of costs are incurred when selling a property and the level of those costs, vary from property to property. Many different factors have influenced the decision, such as the property's structural condition, any mortgage charges, the ownership situation, or the time of the sale.
- 5.1.16 The seller does not always have to bear all costs associated with selling the house. Costs such as the estate agent's commission are shared equally, and the investor usually pays the notary's fees. In the following, I will briefly discuss the costs of selling a property and whether the investor or the seller must bear them.
- 5.1.17 Not every sale of a property involves the same or even similar costs. Some expenses, however, almost always occur. Ordinary incidental expenses that occur before or during the sale of a property are:

- I. Renovation costs
- II. Costs of obtaining documents
- III. Early repayment fee
- IV. Taxes
- V. Estate agent's commission
- VI. Notary fees

5.1.18 More specifically:

- a) **Renovation costs** Simply put, no property is free of flaws, and especially those which are several years (or decades) old, often show signs of age. Renovation costs can range from the wall paint to the insulation of the walls to the condition of the roof truss. More minor and more extensive repairs can therefore be worthwhile before the sale. Because even if these initially cause costs, a property usually achieves a higher sales price if it is free of significant defects. Whether modernising the house is economical should, of course, still be decided individually.
- b) **Documents** - As described above, numerous documents are necessary for a legally valid house sale. The application for these documents sometimes incurs not inconsiderable costs. For example, if the energy certificate has to be newly created, this can cost between €50 and €500 - depending on whether a demand or consumption certificate is required. Authorities also charge a fee for other documents.
- c) **Early repayment fee** - Selling before the fixed interest period of the mortgage expires will also incur additional costs. This early repayment fee tends only to be due if the sale takes place before the end of ten years. No early repayment penalty is due if the owner sells his property after a 10-year loan period. In such a case, according to the law, he can terminate the loan agreement with a notice period of six months and must merely pay the remaining amount and the interest on the due date - but not the extra fee for the early termination of the agreement.
- d) **Taxes** - Investors and owners are subject to taxes when selling a property. For the buyer, real estate transfer tax ("RETT") is generally due. This can only be avoided through an elaborate construction, a so-called RETT blocker structure, in which the investor acquires a maximum of 89.9%. The investor may only obtain the remaining shares after ten years to maintain the tax exemption. RETT varied from federal state to federal state (Bavaria: 3.5%, Northrhine-Westfalia: 6.5%) and was levied on the aggregate of the notarised value of the property, assumed debt, and the importance of specific rights.
- e) **Estate agent's commission** - This so-called broker's commission has been handled differently from state to state in Germany up to now. In some states, such as Hesse or Berlin, only the investor paid, while in others, both parties shared the broker's fee. In 2020, the federal cabinet voted in favour of a

nationwide reform of the brokerage commission, according to which the investor and seller share the costs equally.

f) **Notary fees** - The fee for the notary contract is an unavoidable cost when selling a property. However, the investor usually bears these costs of several thousand Euro. However, it can happen that the seller of the house also must pay the notary fees. From a legal point of view, both parties to the contract are liable for paying the notary. If, for example, the buyer turns out to be unable to pay, the seller must pay all notary fees.

5.1.19 In summary, the seller usually incurs the following costs of a sale:

- Renovation costs
- Costs of obtaining documents
- Taxes - however, a tax-free sale may be possible under certain circumstances.
- Early repayment fee - not applicable under certain circumstances
- Estate agent's commission - since 2020, a maximum of 50% of the total fee

5.1.20 The investor usually incurs the following costs of a sale:

- RETT - depending on the federal state, 3.5 - 6.5 % of the purchase price
- Notary fees - usually 1-2 % of the purchase price
- Land register entry
- Estate agent's commission - since 2020, a maximum of 50 % of the total fee
- Modernisation costs

5.2 The procedure of an insolvency proceeding with real estate assets

5.2.1 In this section, I will shortly describe the typical procedure of an insolvency proceeding with real estate assets secured to relevant creditors:

5.2.2 Insolvency proceedings are initiated at the request of the debtor or a creditor. At the beginning of proceedings, a preliminary insolvency administrator verifies whether there are reasons for insolvency. Already at this point, the insolvency administrator has an obligation to preserve the insolvency estate and to continue the business operations (section 22 (1) S. 2 Nr. 1 InsO). In the case of a real estate portfolio, this would consist of continuing to rent out the property. This obligation applies to the insolvency administrator even if the rental business is temporarily unprofitable, but the subsequent realisation possibilities can be preserved. This obligation is incumbent on the insolvency administrator until the so-called reporting date at the beginning of the opened proceedings.

5.2.3 After the "reporting date", the insolvency administrator shall investigate the assets belonging to the insolvency estate, provided that there is no contrary resolution by

the creditors in their meeting (section 159 InsO). The extent of the administrator's obligation is to act without delay, but not with excessive haste. The level of urgency is determined, in particular, by the nature of the insolvency. As a rule, more haste is required in the case of a sale of an operational business since from its perspective, its insolvency will affect both customers and employees. Continuing debts incurred by the insolvency estate can also reduce the proceeds and thus cause damage to the creditors. The situation becomes different, therefore, if the business operation is easily sustainable. In this case, simply continuing the insolvency proceedings may be warranted if doing so will result in an increase in the value of the assets, based on justified assumptions. This is particularly the case with a real estate portfolio if the income from the properties covers the current expenses and a market recovery can be expected. However, continuing insolvency proceedings also give rise to ongoing costs that are paid primarily from the insolvency estate and thus affect the insolvency ratio.

- 5.2.4 Insolvency proceedings typically have an average duration of about four years in Germany, but this can be significantly longer in more extensive and more complex proceedings. In the meantime, the insolvency administrator can make so-called distributions on the account and thus provide for pro rata distributions from the insolvency estate. However, this only affects unsecured creditors. Secured creditors, such as banks with real estate liens, receive the share that falls on their collateral immediately after realisation (section 170 (1) S. 2 InsO).
- 5.2.5 There are also several procedural variants. On the one hand, the debtor can apply for a regular insolvency procedure, according to which an insolvency administrator acquires the power of disposal over the assets instead of the debtor. As an alternative, a self-administration procedure can be filed, in which the management is regularly supplemented by a CRO and continues the business as a debtor in possession under the supervision of a trustee, taking into account the interests of the creditors.
- 5.2.6 The realisation of real estate secured by a mortgage is generally the responsibility of the insolvency administrator (section 165 InsO). As a rule, a compulsory auction or acute administration may be considered. In a mandatory auction, the property is auctioned off to the highest bidder in a regulated procedure. A property can already be auctioned off on a first date if a bid reaches at least 50% of the market value. The creditor can appeal if only 70% of the market value is born (section 74a (1) ZVG). From the proceeds, the costs, outstanding costs, encumbrances of the property, and possible priority creditors are satisfied in advance. A second hearing is scheduled if the highest bid is too low or the petitioning creditor applies for a refusal. The above restrictions no longer apply, and the highest bid can be awarded to a significantly lower offer (section 74a (4) ZVG).

Discussion: Recovery in foreclosure auctions

- 5.2.7 Different auction proceeds can be achieved in the context of a forced sale. Depending on the region where the relevant property is located, revenues of between 60% and

95% of the market value of the properties can be achieved, as a study for 2018 shows. However, the average value of the auctioned properties in the context of these statistics was €170,000, so this is not representative of the case at hand. A closer look shows that the quota expectation is lower for apartment buildings than for a single condominium. Moreover, there is a correlation between the discount, location, and the quality of the flat. There is also a correlation between the years 2008 and today. In 2008, at the time of the financial crisis, the recovery rates were far below 50% of the market value in all categories. Therefore, a realisation in the current market environment, which parallels 2008, is likely to result in similar markdowns.

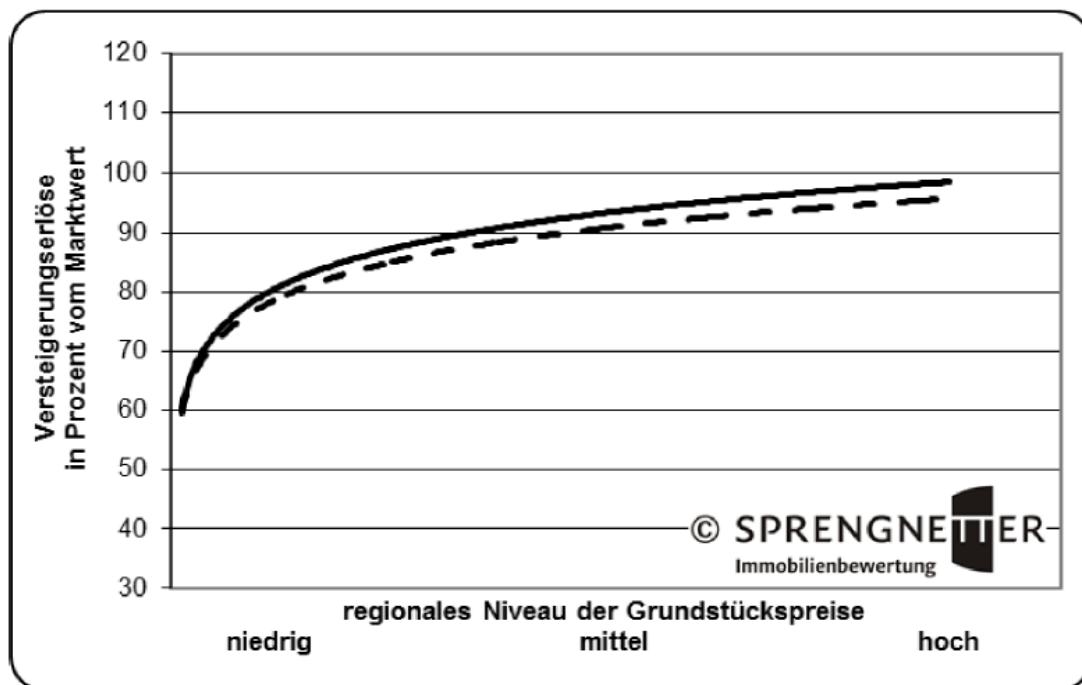


Abbildung: Vergleich der durchschnittlichen Versteigerungserlöse in Prozent vom Marktwert 2016 (gestrichelt) und 2018 für den Teilmarkt der Mehrfamilienhäuser

Figure: Comparison of average auction proceeds as a percentage of market value in 2016 (dashed) and 2018 for the submarket of multi-family houses.

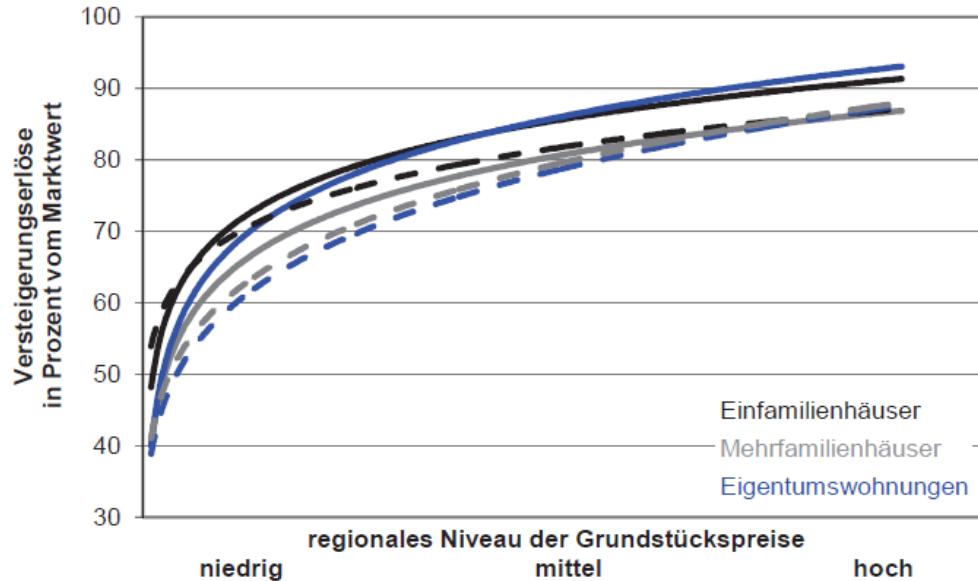


Abb. 4: Vergleich der durchschnittlichen Versteigerungserlöse in Prozent vom Marktwert 2008 (gestrichelt) und 2012

Figure: Comparison of average auction proceeds as a percentage of market value 2008(dashed) and 2012

5.2.8 Secured creditors are entitled to foreclose on property themselves and thus obtain a compulsory auction. The insolvency administrator may conclude a realisation agreement in consultation with the secured creditors. In any case, however, a provision will be made for the insolvency estate to share costs. This shows that in the event of insolvency, it is not in the sole hands of the insolvency administrator to realise secured real estate and the secured creditors have a strong lever through their security interest to enforce their position. Moreover, there are no special duties of consideration towards unsecured creditors in this context.

5.2.9 Beyond the realisation of secured assets, insolvency proceedings are also characterised by a high degree of creditor autonomy. In large proceedings, a creditors' committee is set up as standard, which works closely with the insolvency administrator. In these cases, the insolvency administrator must also obtain a decision from the creditors' committee before making any significant decisions. The creditors' committee can also issue specific instructions to the insolvency administrator. The committee is regularly made up of representatives of the largest creditors, the secured creditors and a representative of the employees and the small creditors (section 67 (1) S. 2 InsO). Whether or not property sales are accelerated or slowed down by the creditors committee or the administrator depends on the individual situation.

5.2.10 The influence is determined by the financing structure. In a group structure, creditors can in principle only exert influence *at the level of the company*, i.e. the debtor as German insolvency proceedings take place at the entity not a group level.

5.2.11 This can therefore lead to structurally senior (and typically secured) creditors actually being closer to the proceedings. Often members of the creditors' committee, they can directly influence the realisation of the assets. In the case of unsecured and structurally subordinated creditors, which are located, for example, at holding level or in a separate financing entity, the possibility of exerting influence is effectively non-existent.

5.3 Key differences and underlying reasoning

5.3.1 The process of selling a property described above differs significantly if the property is sold under solvent conditions or in German insolvency proceedings. In the following, I present the main differences between these two scenarios.

5.3.2 The differences in the sales process under solvent conditions or in German insolvency proceedings are, in at least, eleven areas:

- I. Time available
- II. Image / Interested parties / Investor universe
- III. Public data/data access
- IV. Exclusivity
- V. Condition of the property
- VI. Warranties/guarantees
- VII. Real estate transfer tax / RETT blocker
- VIII. Liability of the insolvency administrator
- IX. Influence of secured creditors
- X. Costs of the sale
- XI. An influx of sale proceeds

Time available

5.3.3 In a sale process under solvent conditions, the seller is under no immediate time pressure. The timing of the sale is determined by the seller himself. Provided that there is no risk of insolvency, a secured financial institution can act more flexibly. There is no NPL designation, so the banks are regularly willing to cooperate, especially regarding extensions or waivers of the exposure. As a result, there is no immediate time pressure in the event of solvent liquidation.

5.3.4 In German insolvency proceedings, on the other hand, the insolvency administrator, as the seller, is under considerable time pressure. On the one hand, this time pressure results from the obligation to start realising the assets immediately or at least in close temporal connection. In addition, there is a purely factual time pressure if the asset

for sale does not cover the operating costs. In this case, the insolvency administrator is forced to make an immediate sale (fire sale) or, in the worst case, must give up the asset.

- 5.3.5 Secured banks are also pushing to close their exposure. When insolvency occurs, the debt is considered non-performing and is subject to stricter regulatory requirements. These harm the equity capital and the rating of the institution. The bank, therefore, has a strong interest in realising the collateral as quickly as possible and accepting any price that covers its exposure. In this context, neither the bank nor the insolvency administrator, dependent on cooperation with the secured creditor, takes subordinated creditors into account.
- 5.3.6 This time pressure directly impacts an essential phase of the sale process, the preparation phase. In insolvency proceedings, the insolvency administrator is not the master of the schedule, but the program is determined by the insolvency proceedings themselves and the creditors. The creditors, represented in the creditors' committee and the creditors' meeting, have a decisive influence on the type and duration of the proceedings and the realisation process. The insolvency administrator can influence and moderate the process through his proposals, but ultimately, the creditors decide.
- 5.3.7 In practice, the insolvency administrator has less time to prepare a sale with the same care and detail as under solvent conditions. Even if an insolvency administrator is not set any statutory deadlines within which he must realise a debtor's assets, there will often be *de facto* time pressure, which is also reflected in discounts on the purchase prices.
- 5.3.8 This suboptimal preparation compared to a sale under solvent conditions significantly influences the sale proceeds to be achieved. The connection is obvious: the shorter the preparation time, the worse the preparation, and the lower the ultimate sale proceeds.

Image / Interested parties / Investor universe

- 5.3.9 Insolvency proceedings usually carry negative connotations. The term has a certain stigma, conjuring up images of financial failure, ruined businesses, and shattered dreams. This image significantly impacts the corresponding investor universe and the willingness to pay total market prices.
- 5.3.10 Insolvency proceedings are legal procedures for individuals or companies that cannot pay their debts. Third parties rightly associate this procedure with the financial failure of the debtor.
- 5.3.11 This negative perception, rightly or wrongly, is then transferred to the debtor's assets. The assets are *per se* suspected of not being suitable to generate a positive economic result or to be of sustainable value.
- 5.3.12 Another reason for the negative image of insolvency proceedings is that they are a lengthy, complex, and heavily regulated procedure.

- 5.3.13 Practice shows that other investors are more interested in an acquisition in insolvency proceedings than in a sale under solvent conditions. As a rule, hedge funds or specialised investors participate, speculating on a substantial discount and are usually unwilling to pay the actual market value. This is already due to the return expectations of these investors, who often have double-digit IRR expectations that can only be realised with favourable purchase prices.
- 5.3.14 In summary, in an insolvency proceeding, you will see interested parties who are not willing to pay the same prices as can be achieved for comparable assets in a sale under solvent conditions.

Available data/data access

- 5.3.15 I have already described the necessary documents required to embark upon a sales process. The insolvency administrator usually does not have the relevant information from his own experience but must rely on data and documents provided by creditors. In insolvency situations, the data situation is often incomplete and unsatisfactory.
- 5.3.16 Insofar as necessary information or assistance is required from third parties (service providers, planners, construction managers), this is often refused because there are outstanding liabilities to the debtor.
- 5.3.17 This leads to a considerable additional effort of due diligence for the investor. Generally, however, the investor cannot obtain sufficient collateral. As described above, the insolvency administrator usually has limited access to the knowledge of the insolvent company, as top performers and those with know-how are often the first to leave the company, due to attractive offers from competitors. This in turn leads to a lack of property-specific know-how for the sales process. The advantages of the property cannot be presented accordingly, and queries from the investor can only be answered to a limited extent. In addition, an insolvency administrator cannot comprehensively provide the necessary documents on the property. Often these are not available, not accessible, or not in an orderly manner and can be provided without processing by the seller's former employees.
- 5.3.18 There are regularly no liquid funds available to commission up-to-date market value appraisals.
- 5.3.19 The uncertainties resulting from these circumstances are considered by the prospective investors in the offers, with sometimes considerable purchase price reductions leading to lower proceeds compared to a sale under solvent conditions.

Exclusivity / due diligence

5.3.20 When selling real estate under solvent conditions, exclusivity is regularly granted to prospective buyers after examination of the indicative offers and an assessment of the creditworthiness.

5.3.21 In insolvency proceedings, on the other hand, I observe that if there is a binding offer that fully satisfies the secured creditors, this is often the winning bid, even if there are significantly higher offers from investors who wish to agree exclusivity for their due diligence, or even if they just need a longer period of time. It has been my experience that the insolvency administrator usually does not take the risk of letting a sale fail, which satisfies all secured creditors.

5.3.22 It has been my experience that the insolvency administrator usually does not take the risk of letting a sale fail, which satisfies all secured creditors.

5.3.23 I can give three examples of transactions with which we have assisted in recent years.

- a) In the sale of a large industrial complex in North Rhine-Westphalia in 2019, the insolvency administrator decided to accept a binding offer despite the existence of an indicative proposal that was 61% higher, as he was not prepared to grant exclusivity again. The losing bidder was an international investor with excellent creditworthiness who had already incurred considerable costs for due diligence.
- b) In the marketing of industrial property in Hamburg in 2022, the insolvency administrator, with the consent of the creditors' committee, awarded the contract to a binding offer. However, several indicative offers were higher, and they wanted to conclude exclusivity agreements. The highest bid was 17 % above the offer which was eventually accepted.
- c) In the sale of commercial and office space near Berlin in 2020, the insolvency administrator accepted a binding offer even though there was a 9 % higher offer and a guaranteed sum offered on the transaction of 10 % on the transaction volume. The losing bidder was a significant discount grocer who first wanted to create building rights and would have concluded the purchase agreement subject to a condition precedent.

Condition of the property

5.3.24 In the case of sale during insolvency proceedings, the investor usually assumes that the previous owner has not made the necessary investments in recent years due to a lack of corresponding financial resources and that there is a maintenance backlog. Especially if properties/projects have been vacant and unfinished for a long time, a significant deterioration of the structural and actual condition is assumed. Even if this were not the case, an insolvency administrator could only refute this to a limited extent. For this, as described above, he lacks access to the seller company's former employees and regular to sufficient documents.

5.3.25 The uncertainties resulting from these circumstances are also considered by the interested parties in the offers, with sometimes considerable risk discounts and leading to lower proceeds compared to a sale under solvent conditions.

Warranties/guarantees

5.3.26 In contrast to sellers under solvent conditions, insolvency administrators cannot give investors standard warranties and guarantees. Therefore, the investors make corresponding risk deductions here.

5.3.27 The insolvency administrator will not issue any guarantees, in particular with regard to the letting situation. This relates to the legal existence of the lease agreement, nor is any assurance given that monthly rents have not been assigned, nor that there are no ongoing legal disputes with the tenants. Insofar as documents are available, a due diligence in advance will normally be limited to their inspection.

5.3.28 Liability for any contaminated sites under the Federal Soil Protection Act is particularly relevant here. But also, other assurances, for example, about the condition of the property, repairs and maintenance carried out or even rental income and rental securities, cannot and will not usually be given by an insolvency administrator. Moreover, a guarantee for which only the insolvency estate is liable would be of very little value to the investor.

5.3.29 Appropriate insurance policies can partly cover the risks of default on warranties and guarantees. However, these insurances involve considerable costs for the investor and cover the risks only partially and usually not completely. In any case, imponderables remain, which the investor considers as discounts on the purchase price, leading to lower proceeds than a sale under solvent conditions.

5.3.30 Finally, it must be considered that missing guarantees and warranties impact the property as collateral for financing. As a result, the financing bank cannot fully value the parcel and will, therefore, regularly discount the value. This can limit the available credit line of an acquirer so that he can ultimately only offer a lower purchase price.

Real estate transfer tax / RETT blocker

5.3.31 As I have outlined above when discussing the costs of sales, every property sale results in the investor's obligation to pay RETT. This tax can be avoided under certain circumstances through so-called RETT blocker structures.

5.3.32 RETT blockers aimed (before the insertion of Section 1 (3a) GrEStG) at preventing the allocation of a domestic property relevant under RETT law in the case of a change of legal entity by interposing a company in which a third party has no or only little economic interest.

5.3.33 With the introduction of Section 1 (3a) of the GrEStG in 2013, the legislature largely restricted such RETT savings models. Since 1 July 2021, amended taxability ratios,

longer holding periods and a new fact § 1 para. 2b GrEStG have been added. In many cases, however, it is still possible to avoid or at least reduce the incidence of RETT through suitable arrangements, such as atypical silent partnerships or the use of blocks.

- 5.3.34 RETT blocker structures take advantage of the unique features of transferring companies with real property ("share deals"). To move a directly held property ("asset deal") in a tax-optimised manner, it must first be transferred to a company, which - depending on the structure - may require a lead time of several years.
- 5.3.35 The starting point for the "89/11 model" (according to the old legal situation "94/6 model") are the provisions in § 1 paragraph 2a, 3, 3a and recently also 2b GrEStG, according to which the transfer of shares in a real estate company is only subject to RETT if it exceeds a participation quota of 90 or 95 per cent (the allocation of 95 per cent applicable until 30 June 2021 continues to apply for some instances).
- 5.3.36 Therefore, investors of German real estate often prefer a share deal via the property company with a so-called RETT blocker structure to avoid the otherwise applicable RETT. In insolvency proceedings, however, such share deals with a RETT blocker structure are difficult to realise. An insolvency administrator would have to be willing to retain the shares in the property company for ten years. Since insolvency proceedings do not usually last that long, the willingness to do so is often not there.
- 5.3.37 This leads to a tax disadvantage of at least 3.5 to 6.5 % of the purchase price (depending on the federal state). The fact that an acquisition from insolvency proceedings is only possible as part of an asset deal thus has a significant negative impact on the purchase price. It leads to lower proceeds compared to a sale under solvent conditions.

Liability of the insolvency administrator

- 5.3.38 Generally speaking, creditors have an interest in receiving payments promptly. An insolvency administrator will, therefore, only refuse an early sale opportunity if he can achieve a higher purchase price by waiting. Otherwise, he would risk making himself personally liable because his task is to realise the assets in the best possible way. He will not bear the risk of betting on a market recovery and/or an increase in value in the future and waiting for the sale. The same applies to the members of the creditors' committee, who are also personally liable for their decisions.
- 5.3.39 Furthermore, until a property is sold, the insolvency administrator must be able to pay the operating costs incurred for the property from the income or from existing funds. If he could not do so and no third party would enable him, he would have to sell the property immediately or even "release" it from the insolvency estate. In the case of an immediate sale, however, he would have to accept considerable discounts.
- 5.3.40 These risks lead interested parties familiar with the insolvency proceedings to submit offers with a low purchase price and a time limit early in the process. The insolvency

administrator and the creditors' committee are thus forced to deal with these offers. Due to personal liability, this often leads to accepting such offers and selling the property significantly below its actual market value. This harms the purchase price and leads to lower proceeds than a sale under solvent conditions.

Influence of secured creditors / structural disadvantage of senior unsecured lenders on holding level

- 5.3.41 In insolvency proceedings, creditors have different interests. The interests of the various creditors and creditor groups are essentially determined by whether they are secured. It should be noted that in almost every insolvency proceeding in which the debtor has real estate property, this real estate is encumbered by real estate liens and is thus primarily available to the secured creditors for satisfaction.
- 5.3.42 First, secured creditors are secured by real estate liens or mortgages. These creditors are highly interested in seeing their collateral realised in full or at least partially to satisfy their claims. If the company is insolvent and its assets are sold, these creditors have a priority right to the proceeds from the sale of their collateral. Since the so-called lending limits for first mortgages were usually 60 - 65% of the property value when the loan was taken out, these - first-rank secured - creditors have a high prospect of satisfaction or an increased quota.
- 5.3.43 Then there are unsecured or subordinated creditors with no collateral to secure their claims. These creditors are interested in the company repaying as much of its debts as possible, and they usually only get back a fraction of their claims in a quick liquidation.
- 5.3.44 These risks lead interested parties familiar with the insolvency proceedings to submit offers with a low purchase price and a time limit early in the process. The insolvency administrator and the creditors' committee are thus forced to deal with these offers. Due to personal liability, this often leads to accepting such offers and selling the property significantly below its actual market value. This hurts the purchase price and leads to lower proceeds than a sale under solvent conditions.
- 5.3.45 Creditors with priority mortgages are usually not interested in a long-term realisation strategy that only benefits other creditors. They can therefore bring about a judicial foreclosure sale of the property, during which they are to be fully satisfied. However, the result is a significantly lower value for a property.
- 5.3.46 Furthermore, in insolvency proceedings, there is always the risk that a court-ordered receivership will be ordered so that the rental income is used to satisfy the mortgage creditors and is not available to the free estate. This scenario may prompt an insolvency administrator to make a quick sale in order not to burden the insolvency estate with further debts without generating any income. Even if an insolvency administrator, in consultation with all creditors, manages to take more time with the sale, the entire market remains aware that the property will be sold sooner or later. The alternative of a property remaining in the portfolio of the previous owner

permanently or even only in the long term does not exist. This alone regularly leads to a price discount being made by investors.

- 5.3.47 Of particular importance for the influence on the sales process and thus on the achievable ratio is the financing structure. In the case of Adler, too, a classic financing structure was chosen: mortgage-backed loans at the level of the project and property companies as well as (SUNs) at the holding level.
- 5.3.48 In the event of the holding company's insolvency, it can be assumed that all or at least a large part of the project and property companies would also have to file for insolvency. Each of these subsidiaries will be wound up in separate insolvency proceedings with a different creditor structure and separate creditors' committee. Thus, the SUNs are not direct creditors in the individual insolvency proceedings of the subsidiaries, are not represented in the creditors' committees and de facto have no or only very limited influence on the realisation of the properties.
- 5.3.49 In fact, the secured creditors at the level of the project and property companies decide on the realisation of the assets. Naturally, these creditors are primarily interested in the satisfaction of their outstanding claims and have no original interest in proceeds exceeding these claims. This is particularly applicable to the Adler Group where approximately €1.6bn of secured lending sit at the level of the project companies. The low level of average LTV will likely induce secured lenders to realise their pledge or advocate an expeditious sale given that even low prices will satisfy their claim.
- 5.3.50 In the proceedings we handle, I therefore regularly see that, at the level of the project and property companies, offers are accepted that lead to a sustainable satisfaction of the secured creditors; only rarely will sales proceeds exceed the claims of the secured creditors. Regardless of the actual value of the assets, the subordinated creditors or SUNs for that matter, are de facto at a clear structural disadvantage in the decision-making process on the sale. This is likely to have a value-reducing effect on their quota.

Costs of the sale

- 5.3.51 A critical factor in comparing the sale of a property under solvent conditions and in the German insolvency procedure. In addition, a common representative must be appointed for the bondholders in the insolvency proceedings. According to supreme court rulings, the remuneration of the joint representative can amount to up to 1% of the nominal volume.
- 5.3.52 Whereas a sale under solvent conditions essentially involves the costs of preparation and the estate agent's fees, the costs of the insolvency proceedings are added in the case of a sale in German insolvency proceedings.
- 5.3.53 Section 54 of the Insolvency Code (the "InsO") defines the costs of the insolvency proceedings as the court costs for the insolvency proceedings, the remuneration and

expenses of the insolvency administrator and the members of the creditors' committee. The amount of payment is regulated in detail in the Insolvency Remuneration Ordinance.

- 5.3.54 The coverage of these costs is a prerequisite for opening the insolvency proceedings, section 26 InsO. The prices of the proceedings are served before all other expenses.
- 5.3.55 The court costs are divided into fees for the application to open insolvency proceedings on the one hand and prices for the insolvency proceedings on the other. The Court Costs Act (GKG) is decisive for the calculation.
- 5.3.56 Regarding remuneration and expenses, the payment of the (preliminary) insolvency administrator is usually the most significant. The amount of compensation is regulated in detail in the InsVV (*Insolvenzrechtliche Vergütungsverordnung*).
- 5.3.57 Furthermore, the so-called realisation costs are deducted before the proceeds are distributed. All costs actually and necessarily incurred by the insolvency estate through the realisation of the object subject to the right to separate satisfaction are to be assessed as realisation costs (section 171 (2) S. 1 InsO); these include, for example, lawyers' or consultancy fees.
- 5.3.58 Of particular importance is the so-called realisation contribution of the insolvency administrator. This contribution is agreed upon between the senior secured creditors, the subordinated secured creditors, and the administrator if the sale proceeds are insufficient to satisfy the senior secured creditors. In this case, the administrator may deduct from the sale proceeds a contribution to the estate for the benefit of the subordinated secure and unsecured creditors. This contribution usually amounts between 5 to 7% of the sale proceeds.
- 5.3.59 Quantifying the costs of the insolvency proceedings and additional costs incurred can only be determined on a case-by-case basis and depending on the size and complexity of the proceedings.
- 5.3.60 The costs outlined above significantly reduce the proceeds for the creditors and result in lower profits compared to a sale under solvent conditions.

An influx of sale proceeds

- 5.3.61 Large corporate insolvencies usually take several years to complete. We handle proceedings that have been ongoing since 2017 and will take several more years to conclude. Although the insolvency administrators often make payments on account, distributions due to the necessary filing of claims and the examination and determination of claims are often delayed.
- 5.3.62 This factor also affects the value of the proceeds in insolvency proceedings compared to the value in the disposal processes of real estate under solvent conditions.

5.4 Summary of “insolvency effect” on price

- 5.4.1 Considering the effects described above, I conclude that in the case of a sale of a property in insolvency proceedings compared to the realisable value in disposal processes under solvent conditions, a reduction in proceeds of **between 15% and 40%** is to be expected, in individual cases even more.
- 5.4.2 In this respect, I am of the view that the assumptions made in the Comparator Report, which put the average discount effect at around 25%, are reasonable.
- 5.4.3 Understandably, no single factor influencing value can be quantified. No data is available for either a simple or multiple regression analysis, and I have refrained from estimating the effect of individual factors.
- 5.4.4 However, I see myself in a position to provide an estimate of the overall effect of all the factors mentioned above.
- 5.4.5 For my assessment, I draw on the empirical results and experience from actual real estate sales processes in insolvency proceedings conducted by my team and me and/or for which I am responsible as a creditor representative.
- 5.4.6 Since 2017 we have conducted 43 real estate sales from insolvency proceedings as M&A Advisor, agents commissioned with the sale or as security trustee.
- 5.4.7 For an overview and a detailed account of these sales, I refer to the evidence presented in section 6.

6 Evidence for differences in outcome

6.1 General description of my role in disposal processes

6.1.1 In 34 of the cases listed below, we were or still are mandated as M&A advisor by the insolvency administrator advising on the realisation of the properties. In one case we represented the investor side. In 8 cases we were appointed as security trustee.

6.2 Data sample of case studies

6.2.1 This section presents evidence from past transactions. These transactions must be evaluated case-by-case. They can only serve as a smaller sample. A statistically valid statement about the market is, at this juncture, not possible. However, it provides an indicative cross-section of the German real estate market concerning property sales from insolvency.

6.2.2 Transactions in the last ten years are covered, varying in transaction size and period. The data will also provide information about the duration of a transaction in the context of insolvency. Furthermore, data points will be collected to show what discount a seller must accept for a market value appraisal in the event of insolvency.

Expert witness report on insolvency discount

6.2.3

Corporate 1 - BR ¹⁾	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process ²⁾	Insolvency Discount	Sales Proceeds (%) ³⁾	Litigation Costs (%)
RE 1	Commercial	Lower Saxony	Existing Property	€5-10m	2022	Ongoing	Ongoing	Ongoing	Ongoing
RE 2	Commercial	Lower Saxony	Existing Property	<€2.5m	2022	Ongoing	Ongoing	Ongoing	Ongoing
Corporate 2 - BR	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	North Rhine-Westphalia	Development	>100m	2022	2	Ongoing	Ongoing	Ongoing
RE 2	Residential	Lower Saxony	Development	50-100m	2022	2	15%	85%	6%
RE 3	Residential	North Rhine-Westphalia	Development	>100m	2022	1	11%	89%	6%
RE 4	Residential	Bavaria	Development	50-100m	2022	8	Ongoing	Ongoing	Ongoing
Corporate 3 - BR	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Berlin	Existing Property	€30-40m	2022	Ongoing	Ongoing	Ongoing	Ongoing
RE 2	Residential	North Rhine-Westphalia	Existing Property	€5-10m	2022	Ongoing	Ongoing	Ongoing	Ongoing
RE 3	Commercial	Brandenburg	Development	€2.5-5m	2022	Ongoing	Ongoing	Ongoing	Ongoing
RE 4	Commercial	North Rhine-Westphalia	Existing Property	€2.5-5m	2022	Ongoing	Ongoing	Ongoing	Ongoing
Corporate 4 - BR	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Schleswig-Holstein	Existing Property	€10-20m	2021	Ongoing	Ongoing	Ongoing	Ongoing
Corporate 5	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Bavaria	Existing Property	€2.5-5m	2022	5	22%	78%	6%
Corporate 6	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	North Rhine-Westphalia	Existing Property	€2.5-5m	2022	5	25%	75%	6%
RE 2	Commercial	Hesse	Existing Property	€2.5-5m	2022	8	32%	68%	6%
Corporate 7	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Bavaria	Existing Property	€5-10m	2019	4	58%	42%	6%
Real Estate Company 1 - BR	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	Bavaria	Existing Property	<€2.5m	2020	2	18%	82%	6%
RE 2	Residential	Bavaria	Existing Property	€5-10m	2020	2	95%	5%	6%
RE 3	Residential	Bavaria	Existing Property	€10-20m	2020	Ongoing	Ongoing	Ongoing	Ongoing
RE 4	Residential	Bavaria	Existing Property	€10-20m	2020	Ongoing	Ongoing	Ongoing	Ongoing
RE 5	Residential	Bavaria	Existing Property	€10-20m	2020	Ongoing	Ongoing	Ongoing	Ongoing
RE 6	Residential	Bavaria	Existing Property	€10-20m	2020	Ongoing	Ongoing	Ongoing	Ongoing
RE 7	Residential	Bavaria	Existing Property	€5-10m	2020	Ongoing	Ongoing	Ongoing	Ongoing
RE 8	Residential	Bavaria	Existing Property	€10-20m	2020	Ongoing	Ongoing	Ongoing	Ongoing

Footnotes valid for all subcategories: ¹⁾ BR=Bond Restructuring ²⁾ in month ³⁾of the appraisal value

6.2.4

Real Estate Company 2	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	Bavaria	Existing Property	n.a.	2021	3	n.a.	n.a.	6%
RE 2	Residential	Bavaria	Existing Property	n.a.	2021	3	n.a.	n.a.	6%
RE 3	Residential	Bavaria	Existing Property	€2.5-5m	2021	3	48%	52%	6%
Corporate 8	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Baden-Wuerttemberg	Existing Property	€5-10m	2022	7	66%	34%	6%
Corporate 9	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Thuringia	Existing Property	<€2.5m	2018	Ongoing	Ongoing	Ongoing	Ongoing
Corporate 10	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Brandenburg	Existing Property	€2.5-5m	2019	25	22%	78%	6%
Private 1	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Bavaria	Existing Property	€2.5-5m	2020	10	19%	81%	6%
Private 2	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Baden-Wuerttemberg	Existing Property	<€2.5m	2020	6	33%	67%	6%
Private 3	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Bavaria	Existing Property	<€2.5m	2018	5	20%	80%	6%
Private 4	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	Hesse	Existing Property	<€2.5m	2015	5	31%	69%	6%
Privat 5	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	Saxony	Existing Property	<€2.5m	2019	7	0%	138%	6%
RE 2	Residential	Saxony	Existing Property	<€2.5m	2019	Ongoing	Ongoing	Ongoing	Ongoing
RE 3	Residential	Thuringia	Existing Property	<€2.5m	2019	Ongoing	Ongoing	Ongoing	Ongoing
RE 4	Residential	Saxony	Existing Property	<€2.5m	2019	7	22%	78%	6%
RE 5	Residential	Saxony	Existing Property	<€2.5m	2019	Ongoing	Ongoing	Ongoing	Ongoing
RE 6	Residential	Saxony	Existing Property	<€2.5m	2019	7	27%	73%	6%
Corporate 11	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Residential	North Rhine-Westphalia	Existing Property	<€2.5m	2017				
RE 2	Residential	North Rhine-Westphalia	Existing Property	<€2.5m	2017				
RE 3	Commercial	North Rhine-Westphalia	Existing Property	€10-20m	2017	30	76%	24%	6%
RE 4	Commercial	North Rhine-Westphalia	Development	<€2.5m	2017				
RE 5	Commercial	North Rhine-Westphalia	Development	<€2.5m	2017				
RE 6	Commercial	North Rhine-Westphalia	Development	<€2.5m	2017				
Corporate 12	Asset Class	Federal State	Existing Property /Development	Appraisal Value	Year of Insolvency	Duration Sales Process	Insolvency Discount	Sales Proceeds (%)	Litigation Costs (%)
RE 1	Commercial	Hesse	Existing Property	€5-10m	2014	6	62%	38%	6%
RE 2	Commercial	Bavaria	Existing Property	<€2.5m	2014	11	22%	78%	6%

Footnotes valid for all subcategories: ¹ BR=Bond Restructuring ² in Month ³of the appraisal Value

6.2.5 The table shows valid data points, which will be analysed in more detail in the next section and can thus provide information and guidance as to likely outcomes in connection with real estate realisation out of insolvency.

6.3 Further quantitative analysis and critical conclusions

6.3.1 One Square has been a party to 47 projects, of which 30 have been successfully completed. Projects include both non-yielding/development (8) and yielding/finished (39) properties across both residential (25) and commercial/non-residential end users (22). The projects are spread across Germany, with a particular focus on Bavaria (17) and North Rhine-Westphalia (11) and include both larger scale developments as well as different sized yielding assets across a multitude of different end users – from residential real estate to commercial real estate that is tailored to a specific end user (manufacturing / logistics).

6.3.2 Overall, 64% of projects have been successfully marketed with 17 projects currently in progress.

Project Status by Year			
Insolvency Year	Projects	<i>thereof completed</i>	Completion in %
2019 and older	19	15	79%
2020	10	4	40% ¹
2021	4	3	75%
2022	14	8	57%
Sum	47	30	64%

¹includes 6 non-finished projects where One Square is mandated as security trustee and the sales processes are conducted by external parties

6.3.3 Based on the completed projects, actual transaction values out of the sales process indicate a consistent insolvency discount of – in our sample – an average of 33% compared to the estimated market values prior to the start of the sales process as evidenced by a valuation opinion or a valuation estimate.

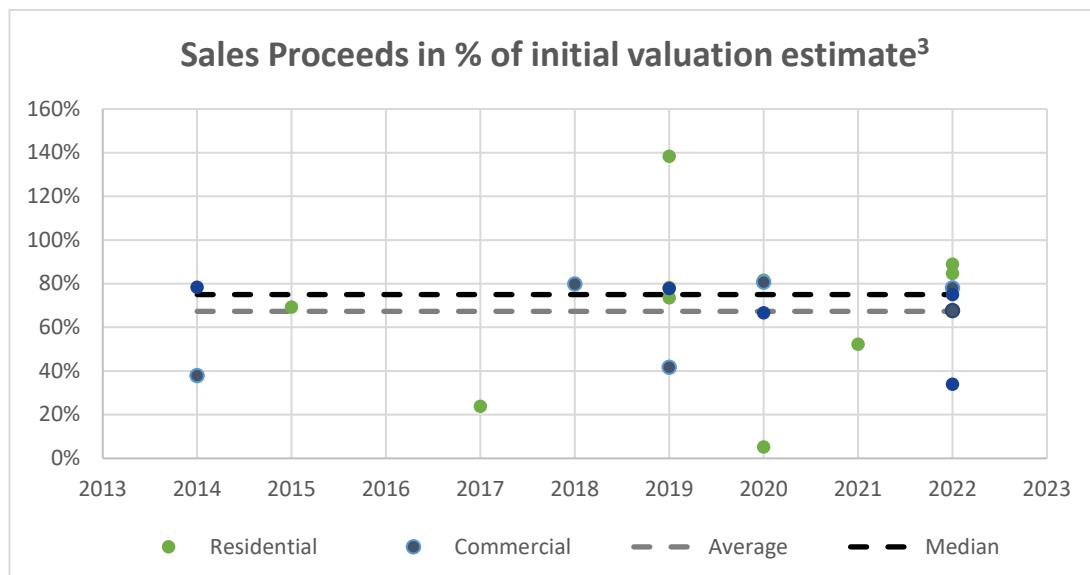
6.3.4 The average is influenced in both directions by several outliers which include projects with complexities / specific characteristics that lower the number of participants and increase price sensitivity of potential investors. In this regard, we believe that the median value of 25% might give a better approximation of the applicable pricing discount to market values realised through a sales process in an insolvency.

6.3.5 The insolvency discount is largely independent of the year of the insolvency application and is consistently observable in the projects we have advised on.

Insolvency Discounts by Year - Completed Projects			
Insolvency			
Year	Projects	Average Sales Proceeds (%) ²	Discount
2019 and older	15	70%	30%
2020	4	59%	41%
2021	3	52%	48%
2022	8	71%	29%
Average		67%	33%
Median		75%	25%

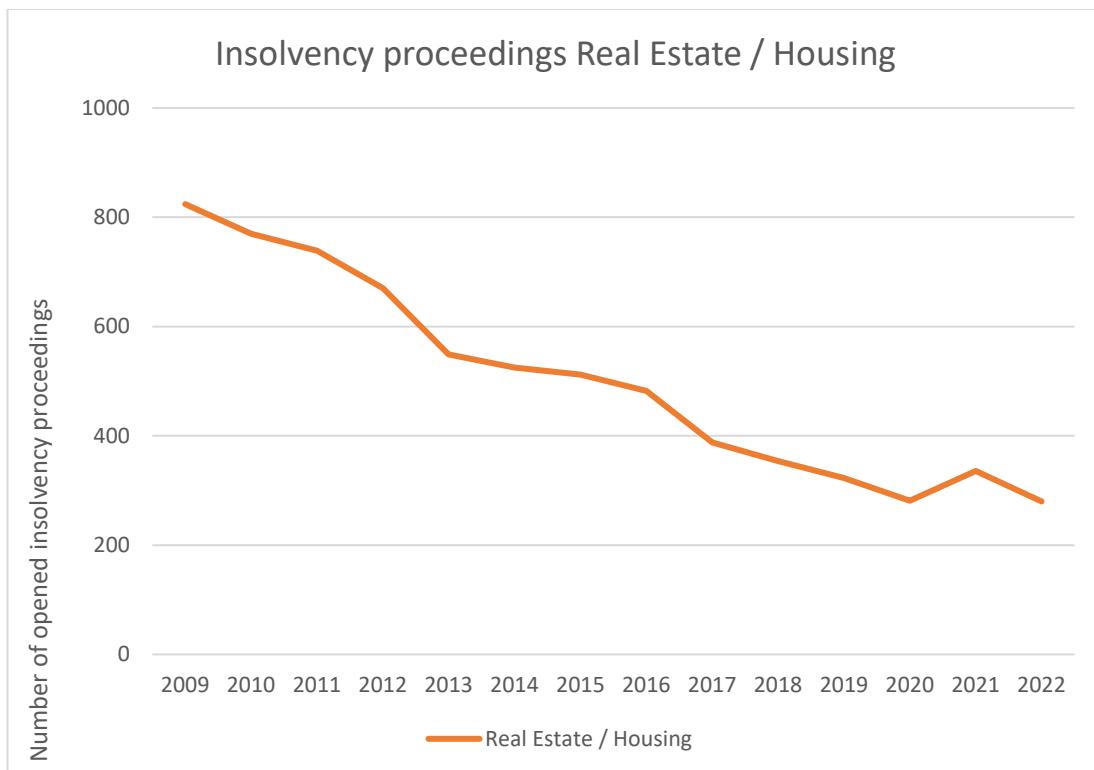
²in % of valuation prior to commencement of insolvency proceedings

6.3.6 Sales values range from 5% up to 138% of the estimated market value. Commercial projects had lower variations in realised value compared to the initial valuation estimate while proceeds of residential projects were more widely distributed.



³includes all 30 projects. 6 individual residential projects have been sold as part of one single portfolio transaction in 2017

6.3.7 General sample and project size prior to 2022 is affected by the general market uptrend and a resulting falling number of insolvencies – since 2008, the number of insolvency proceedings that have been opened in the real estate/housing sectors has decreased by ~66% and has only slightly increased from 2020 onwards.



Source: German Federal Statistical Office

6.3.8 Insolvencies in the recent past largely consisted of smaller companies and individuals - out of the cumulative 616 opened insolvency procedures in the real estate sector in 2021 and 2022, we observed only three with a consolidated asset value of at least €100m, of which One Square is advising in two proceedings³.

Overview real estate insolvencies since 2021 with a consolidated net asset value of above €100m ³					
Company	Business description	Insolvency administrator	Consolidated asset value (€m)	Opening date	
Eyemaxx Real Estate AG	Management and development of real estate projects	Dr. Andreas Kleinschmidt	282	06.12.2021	
FAKT.AG	Management and development of real estate projects	Dr. Gregor Bräuer	513	13.12.2022	
Terragon AG	Real estate development	Dr. Rainer Eckert	111	11.07.2022	

³excluding home care operators

- 6.3.9 The last German real estate insolvency with a consolidated asset value of > €1bn dates back to 2013 with the insolvency of IVG Immobilien AG.
- 6.3.10 The specific insolvency discount for an insolvency on the scale of the Adler Group can therefore not be estimated, as there have been no comparably large insolvencies at least in the last 14 years. The last similarly large insolvency of a real estate company could be seen in Germany in 2009 with Level One.

6.4 Level One

- 6.4.1 At the beginning of 2009, Level One went insolvent in one of Germany's most prominent real estate deals. The company had accumulated debts of €1.5bn. According to the insolvency administrator, Rolf Rattunde, the bankruptcy affected 38 property companies with approximately 20,000 flats and 500 commercial properties.
- 6.4.2 The creditors' loss amounted to between 21 % and 25 % ⁸on the loan structure secured by the assets. Even under the unlikely assumption, that the LTV of the loan structure at the date of default was 100 %, the insolvency discount would be between 21 % and 25%. More likely, the initial LTV was between 70% and 85%. Property prices at the time were more or less stable until default and rising afterwards, ⁹ so that the discount on the market value was probably significantly higher.

⁸ Costar Finance 29/04/2013

⁹ VdP Indice multifamily homes 2000 - 2013

7 Comments on expert reports by 3rd parties

7.1 Comment on Comparator Report

	Background for Assumptions	Comment
7.1.1	<p>“Fire sales:</p> <p>Specific secured lenders are assumed to demand immediate repayment of their loans, forcing an administrator to liquidate secured assets, even at steeper discounts to GAV, to repay creditors early in the proceedings". (cp. p. 76; Comparator Report)</p>	We currently observe that secured creditors prefer to pursue foreclosure rather than enter into liquidation agreements with unsecured or subordinated secured creditors.
7.1.2	<p>“The taint of insolvency:</p> <p>Although the administrator is not under immediate pressure to sell all assets, the market perception is assumed to remain "negative" as the administrator is perceived as required to sell the assets within a reasonable timeframe. This ultimately is believed to negatively impact the asset price the administrator will be able to realise in the market." (cp. p. 76; Comparator Report)</p>	We have observed that the insolvency administrator is often under time pressure. The current income must finance the operating costs until a property is sold. If this is not possible, the property must be sold immediately, whereby significant price reductions must also be accepted. There is a group of investors who specialise in purchases from insolvency, invest exclusively with their capital and can therefore react very quickly to the purchase.
7.1.3	<p>“Limited reps & warranties:</p> <p>Administrator will not provide reps & warranties (over basic reps & warranties such as ownership and capacity to transact), leading to buyers being required to factor in any risks in the purchase price and thus resulting in discounts to GAV." (cp. p. 76; Comparator Report)</p>	The insolvency administrator regularly excludes warranties as far as legally possible and gives no guarantees, which leads to significant price discounts. These risks are only insurable to a limited extent, and W&I insurances cost about 3% of the transaction value for transactions in insolvency.
7.1.4	<p>“Limited competition:</p> <p>Insolvency situation limits interested parties to mostly opportunistic buyers who acquire assets at different (substantially lower) pricing points; this dynamic is further substantiated by current market conditions, where financial investors face less competition due to reduced market liquidity as former competitors (i.e. other real estate owners and operators) have</p>	Since Q2 2022, we have observed a significant decline in transactions in the real estate market, which has almost led to a standstill in sales in insolvency situations.

7.1.5	<p>reduced their buying activity." (cp. p. 76; Comparator Report)</p>	
	<p>"As a result of the favourable market environment over the last 10+ years in the German residential real estate market, there have been no large-scale residential real estate insolvencies in over a decade from which to establish precedents for insolvency effects. Therefore, assumptions about insolvency discounts and other products of such proceedings have been substantiated by ten interviews with real estate experts and insolvency practitioners." (cp. p. 76; Comparator Report)</p>	<p>We have compiled transactions of real estate sales from the insolvency of the last six years, which we have accompanied. The evaluation shows that significant insolvency discounts had to be accepted.</p>

Assumptions

7.1.6	<p>"For yielding assets, experts indicated that discounts typically range from 20-40% (excl., highest / lowest value as outliers) and strongly depend on competition among bidders." (cp. p. 76; Comparator Report)</p>	<p>We put the costs caused by the insolvency alone at around 25%. These are always to be deducted regardless of the property's condition and the situation's image. Further deductions must be added to this due to inadequate due diligence.</p>
7.1.7	<p>"For yielding assets, we therefore conservatively assume a 25% insolvency discount in 2023 (which is the mean of the expert interviews excl. two outliers), with subsequent decreases by 2.5 pp. per annum to 12.5% until 2028, related to an increase in market liquidity/competition among bidders alongside recovery of market valuations." (cp. p. 76; Comparator Report)</p>	<p>High-yielding existing properties with a low investment backlog are certainly the easiest to sell, even in insolvency. However, it remains to be noted here that debt financing of projects acquired from insolvency situations is more complex than that from solvent conditions.</p>
7.1.8	<p>"For developing assets, experts indicated that discounts could range from 10% for undeveloped land to 100% for delayed, unfinished constructions. However, it is consensus among experts that discounts are highly dependent on individual project characteristics. Hence, realistic asset values in case of insolvency have been developed with management on a project-by-project basis; on a weighted average basis, this</p>	<p>In the case of the sale of project development properties in insolvency, the first phases up to the creation of building rights are often not priced in by investors, but the purchase prices are frequently based on the land value. Advanced but not yet completed projects are challenging to find buyers in insolvency.</p>

amounts to a ~23% discount per development asset compared to the purchase prices assumed in the Restructuring Plan." (cp. p. 76; Comparator Report)	
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7.2 Comment on Gerlinger Report

7.2.1	<p>"Comment on potential fire sales enforced by specific secured lenders:</p> <p>Correct, but senior German lenders are initially likely to avoid mortgage enforcement and/or grant waivers as long as there is professional property management in place, interest and amortisation are covered, and there is a realistic outlook that the bank will get repaid." (cp. 3.31.; Gerlinger Report)</p>	<p>We do not observe secured creditors avoiding foreclosure to create the possibility for subordinated secured or secured creditors to be satisfied. Instead, we see that the only interest of secured banks is to get into the money, and they do not want to take risks for the benefit of subordinated creditors. If a sale process in insolvency is expected to lead to a result that fully satisfies the banks, they would push for the sale or use the appropriate legal means.</p>
7.2.2	<p>"Comment on the "taint of insolvency" as market participants may believe that the insolvency administrator is being required to sell all assets in a reasonable timeframe:</p> <p>Correct, but that situation is similar under the RP, where the management would also be required to sell most of the portfolio in 2024 / early 2025 to repay bonds. Under the RP, the pressure to sell would likely even be higher." (cp. 3.31.; Gerlinger Report)</p>	<p>We observe that other buyer groups appear as potential investors in insolvency proceedings. For example, for some months, we have been increasingly approached by hedge funds that want to invest in the German market from insolvency situations at favourable terms.</p>
7.2.3	<p>"Administrator comment will provide only limited representations and warranties:</p> <p>Correct, but lack of representations and warranties can account for these simple, yielding residential buildings mostly being covered by, e.g. purchasing title insurance and conducting more financial and technical due diligence, the additional costs below 1% of GAV. Also, I believe that potential investors would assess warranties from a recapitalised</p>	<p>After consultation with the real estate expert of a large insurance broker, the costs of a corresponding S&I insurance outside of insolvency are around 1% and in bankruptcy at 3% of the transaction volume.</p>

	Adler Group very cautiously." (cp. 3.31.; Gerlinger Report)	
7.2.4	<p>"Comment on limited competition, as an insolvency situation would limit interested parties primarily to opportunistic parties:</p> <p>Correct, but liquidity can be improved significantly by conducting a structured sales process via agents, a specific option also under insolvency." (cp. 3.31.; Gerlinger Report)</p>	Usually, an estate agent is also commissioned to realise the real estate in insolvency proceedings. However, this does not improve liquidity.
7.2.5	<p>"From my own experience and having spoken to investors with significant insolvency experience, I would comment that all the above arguments have some validity, but not to the extent that they would justify a 22.5% discount to a sale by Adler Group under RP. Also, a recapitalised Adler Group has an even more significant debt burden and time pressure to sell the assets under the RA. Hence, I think that a discount of 5% (in comparison to the proceeds under the RP) is appropriate for the RA to reflect higher due diligence and insurance cost and reward for any remaining risk." (cp. 3.32.; Gerlinger Report)</p>	As already explained, the discount of approx. 25 % results from the insolvency costs and other factors such as image, data room, investor groups, and rarely exclusivity.

7.3 Comment on Rickelton Report

	Fire sales	
7.3.1	<p>"I would agree that sometimes insolvency may result in fire sales of assets. The extent to which insolvency may require fire sales of assets is typically dependent on a range of different factors, including, for example, holding costs and the related liquidity position." (cp. 5.12.; Rickelton Report)</p>	We observe that fire sales are driven by the condition and yield of the individual properties and by the interest of secured creditors to be satisfied quickly. The risk of foreclosure sales is underestimated, given the secured lenders' low LTVs and market uncertainty.
7.3.2	<p>"Fire sales would be more likely to be required in a real estate business regarding complex operational aspects (such as a development asset in active stages of construction) or a yielding asset which is financially onerous. There would not typically be a rationale for fire sales in the context of net income-</p>	We find that development projects are virtually impossible to sell in insolvency in the current interest rate situation with high construction costs and supply chain bottlenecks.

generating yielding assets. Yielding assets account for 67% of the Group's assets. In addition, I understand that the majority98 of BCP's assets are yielding assets." (cp. 5.13.;Ricketton Report)	
7.3.3 "The example cited by BCG is that specific secured lenders would force an administrator to liquidate secured assets at steeper discounts to GAV99. I have discussed this assumption with i) a senior restructuring colleague. After consultation with the real estate expert of a large insurance broker, the costs of a corresponding S&I insurance outside of insolvency are around 1% and in insolvency at 3% of the transaction volume at FTI Consulting in Germany; ii) Knight Frank; and iii) Gleiss Lutz (a German law firm). They have provided consistent responses, which are summarised as follows: <ul style="list-style-type: none"> • An insolvency administrator in Germany does not have pressure to sell assets quickly if there is no cash flow problem. • An insolvency administrator in Germany is usually interested in a high recovery and not necessarily a quick cash recovery. The administrator must seek the asset's best possible value and retain a high level of discretion in determining the best method to realise value. They are also incentivised to achieve value accordingly by receiving administrator fees based on a percentage of realisations. • It is not common for a lender to a German property asset to enforce the mortgage on that property as the sale process would then be a court-run process with a public auction, which is likely to result in a lower return than what could be achieved in an orderly process 	<p>Secured lenders have a privileged position in the insolvency/default situation. In the case of Adler, secured funding accounts for less than 50 % of the overall budget and less than 50 % of the property value in all valuation scenarios outside of insolvency. The motivation of the secured lenders is high to sell the assets quickly as the risk of recovery of less than 100 % is minimal. So they might appoint a special administrator for the property (<i>Zwangsverwalter</i>) and/or enforce the mortgage (<i>Grundschuld</i>); even if the lenders don't enforce the mortgage, the potential pressure on the insolvency administrator is high to sell quickly. Banks might also sell the secured loans at relatively small discounts to NPL-buyers with even more aggressive approaches.</p> <p>The public auction is not a threat to the secured lenders as in the first auction, the price limit is 50 % with the lender's consent, 70 % without the lender's approval and 50 % in the second auction. There is no obligation to hold a third auction with no price limit. In the market practice, lenders try to agree with investors renegotiated bids (<i>Ausbietungsgarantien</i>), which cover their needs. (Purchasing a property in a public auction delivers a clean asset free of historic tax or legal risk.)</p> <p>As long as a purchase price is obtained that fully or nearly satisfies the lenders' secured claims, they will forgo foreclosure.</p>

<p>with sale process undertaken by an agent. Instead, an administrator and the secured creditor would usually agree on an asset realisation strategy that would maximise value in an orderly manner.</p> <ul style="list-style-type: none"> • German lenders are initially likely to avoid mortgage enforcement and/or grant waivers as long as there is <i>“professional property management in place, interest and amortisation are covered, and there is a realistic outlook that the bank will be repaid”</i>. (cp. 5.14.ff; Rickelton Report) 	
<p>7.3.4 “Gleiss Lutz has advised that they have been involved in advising on several real estate insolvency situations in Germany in recent years. In their experience, they have not seen a fire sale or sale of property assets with a specific insolvency discount. They have also advised that an insolvency administrator in Germany would typically need consent for any significant disposals from a creditor committee which would be securitized to maximise value.” (cp. 5.15.; Rickelton Report)</p>	<p>The market situation in the past years was completely different. There is pressure to resolve the case quickly, as the expectation of rising prices and few offers motivate more buyers to turn to insolvent projects for sourcing. As the market situation turns around, this effect will reverse. Our experience in the Eyemaxx case underpins this and the market feedback in the Fakt AG case. Research supports the thesis that LGD correlates positively with market conditions.</p>
<p>7.3.5 “Regarding the Group's development assets, I understand from Knight Frank that many have not seen any active development work in two years or more. Of the 22 development assets that Knight Frank reviewed, 11 have not yet started development, seven have been stopped since at least 2021 (and in several cases earlier), two projects are active, and two are completed¹⁰¹. That being the case, there would be less need for a fire sale. Further, the insolvency discount relating to a stalled development should already be factored into the valuation. There should not be a material difference between the Relevant Alternative and</p>	<p>Purchasing projects, especially those already in different states of development, requires deep and extensive due diligence. In an insolvency, the possibilities are limited more or less to the existing data room due to, e.g., the leave of decisive staff, limited resources to provide additional expertise etc. etc. That means that potential buyers will reflect a lack of information in risk premiums and therefore reduced bids.</p>

	the Restructuring Plan in this respect.” (cp. 5.16.;Ricketton Report)	
7.3.6	“The BCG Comparator Report notes that “ <i>the administrator is not under immediate pressure to sell all assets</i> ”. This contrasts with the Restructuring Plan, where the anticipated disposal strategy is “ <i>driven by [the] debt repayment schedule</i> ”. (cp. 5.16.;Ricketton Report)	Due to the divergence of interest of the different lenders, the pressure on the insolvency administrator by the secured lenders is high.
7.3.7	<p>“Based on the above observations and considering the nature of the Group's interests, I would think that the below approach would be logical:</p> <ul style="list-style-type: none"> • There may be a rationale to prioritise the sale of development assets. Although this should not be a fire sale by default, an administrator should consider each asset's specifics. • There is a rationale to prioritise the sale of yielding PropCos with negative net cash flow. However, subject to available funds, there should be a cost/benefit analysis on the discount to value compared to the losses that would be incurred. So again, not necessarily a default fire sale. • Fire sales should be avoided on collateral holding PropCos for Lender 1, 2 & 3's securitized loans; I can see no rationale for these assets to be subject to fire sale given administrator duties.” (cp. 5.18.ff;Ricketton Report) 	<p>As long as there is minimal risk for the secured lenders for a shortfall due to a low LTV, there is no upside potential to wait.</p> <ul style="list-style-type: none"> • Development projects should not be sold out of insolvency as this is value-destroying. <p>This argument is agreed with. In these cases, in particular, it is possible to grant exclusivity to individual interested parties, which, however, leads to longer sales phases.</p> <ul style="list-style-type: none"> • Insolvency would only initiate fire sales, not a sale in the planned proceedings.
7.3.8	“Further, I note that the sale period set out for the asset disposals in the Relevant Alternative is anticipated in the BCG assumptions to run to Q4/27. Whereas the Restructuring Plan is based on the projected sale of all yielding assets by Q4/26 and all development assets by Q4/25. Therefore, it seems incongruous to assume material discounts as a result of fire sales in the scenario that contemplates a more	The fire sales are due to the strong situation of the secured lenders. In the event of insolvency of the individual project companies, they have the primary influence on the sales and will not wait to achieve better purchase prices. For this reason, the time frames for sales are often shortened in insolvency.

elongated disposal timeframe based on the assumptions in the BCG Comparator Report." (cp. 5.19.;Ricketton Report)	
Taint of insolvency	
7.3.9 "Many of the points set out concerning fire sales are also relevant to the rationale for the discount due to 'taint of insolvency', given this was referred to as " <i>market perception assumed to remain 'negative' as the administrator is being perceived as being required to sell the assets within a reasonable timeframe</i> ". In particular, I would note that: <ul style="list-style-type: none"> • The asset disposal period in the Restructuring Plan is shorter than the Relevant Alternative. • Real estate investors are likely to be aware of the post-Restructuring Plan SUNs maturities, and they may therefore perceive that assets will need to be sold within a reasonable timeframe and seek to use this to obtain price reductions." (cp. 5.20.;Ricketton Report)	Insolvency of the size of Adler Group will harm the whole market, not only by the additional real estate offer but by questioning the business model itself, which is very similar to the ones of even bigger companies like Vonovia, LEG, TAG etc.etc., limiting their financing capacity and turning them from holders or potential buyers into sellers themselves. This will result in even lower prices in a generally weak market for a more extended period. A going-concern solution will have a neutral or even positive effect as the insolvency risk of Adler is usually known, and the avoidance is a buoyant market signal, supporting prices in general.
7.3.10 "Therefore, I would consider that there should not be a need for a material discount in the Relevant Alternative as compared with the Restructuring Plan." (cp. 5.21.;Ricketton Report)	The secured lenders are in control of the sales process in insolvency. As a result, significant discounts on purchase prices are to be expected.
7.3.11 "There may even be some buyers in specific situations who may prefer to purchase assets from an insolvency administrator due to a perception of certainty, e.g., concerning clawback risks." (cp. 5.22.;Ricketton Report)	A clean asset could only be achieved in a foreclosure, in which certainly not all potential investor groups would participate.
Limited representations and warranties	
7.3.12 "I have received input from Knight Frank on the likely importance of representations and warranties to buyers in acquiring the yielding asset portfolios. Knight Frank has advised that the three typical asks of a buyer would be i) title guarantee, ii) confirmation as to rental receipts, and iii) confirmation	The rules can provide confirmations, but there will be no guarantees or liability claims against the insolvency administrator.

	of full disclosure of all buildings damaged." (cp. 5.23.;Rickelton Report)	
7.3.13	"The BCG Comparator Report indicates that title guarantees would be granted by an insolvency administrator (given reference to the provision of warranties such as ownership and capacity to transact)." (cp. 5.24.;Rickelton Report)	In Germany, ownership is evidenced by the land register and the insolvency note is also entered in the land register. This ensures that property is transferred in a legally secure manner, even in insolvency proceedings.
7.3.14	"Knight Frank advises that a buyer would be able to purchase title insurance, as well as undertake additional due diligence to satisfy themselves as to rental receipts and buildings damaged, and therefore discounts arising due to the lack of representations and warranties should not be material, and likely to be below 1% of GAV." (cp. 5.25.;Rickelton Report)	Additional due diligence is regularly associated with costs for the investor, which the investor would only want to incur as part of an exclusivity agreement. However, such contracts cannot usually be concluded by the insolvency administrator. Consequently, in insolvency proceedings, bids that are lower and binding are regularly accepted rather than granting exclusivity to conduct detailed due diligence in the case of higher indicative bids. Insurance in an insolvency case is at least more expensive or even impossible to get due to the higher risk.
7.3.15	"Knight Frank also noted that buyers might query the value of representations and warranties from a refinanced Adler Group undertaking a solvent wind-down following the Restructuring Plan scenario. Therefore, the difference between the Restructuring Plan and the Relevant Alternative in respect of this matter should not be material." (cp. 5.26.;Rickelton Report)	In consultation with a real estate placement operation professional at Marsh, I have learned that such insurance can cost up to 3% of the transaction value in bankruptcy sales and that many risks are not covered.
7.3.16	"I have also received input on this topic from my real estate tax colleagues based on their extensive experience in real estate transactions. They confirmed the three typical representations and warranties 'asks' that Knight Frank mentioned. They also confirmed that they often see title guarantees covered by insurance, and they agreed that buyers could obtain comfort on both rental income and the condition of buildings via appropriate diligence." (cp. 5.27.;Rickelton Report)	Without the exclusivity agreement, investors are regularly unwilling and able to carry out the necessary costly and time-consuming due diligence.

7.3.17	<p>“Based on my assessment of the above points, I conclude that buyers with enhanced diligence could manage the impact of limited representations and warranties. However, buyers may use this as a negotiating tactic to request a discount. The extent to which an insolvency administrator can push back on such negotiation tactics would be driven by the degree of competitive tension in a sale process.” (cp. 5.28.;Ricketton Report)</p>	<p>Negotiation tactics are a tool that can regularly be used outside insolvency. In insolvency proceedings, the administrator is regulated. Transactions must be approved by the creditors' committee, on which significant creditor groups are represented.</p>
7.3.18	<p>Limited competition</p>	
		<p>“The final rationale for the insolvency discount referenced in the BCG Comparator Report relates to insolvency potentially narrowing the interested buyer pool, particularly in the current market of reduced liquidity.” (cp. 5.29.;Ricketton Report)</p>
7.3.19	<p>“I agree that insolvency can narrow a buyer pool in certain circumstances. However, the extent to which this may be the case varies according to the nature of the business and/or asset being purchased. Regarding the Group's yielding portfolios (the largest source of value), this is a relatively straightforward asset class, i.e., an established residential property portfolio where the asset and its associated rental income can be ascertained by buyer diligence. Further, the reference to a reduced liquidity market applies at least equal to the Restructuring Plan scenario, given the disposal programme in that scenario is assumed to be completed 12 months earlier than in the Relevant Alternative.” (cp. 5.30.;Ricketton Report)</p>	<p>Potential investors are often unable or unwilling to conduct intensive due diligence without exclusivity and therefore make lower offers. For these reasons, certain investor groups do not make binding offers in insolvency proceedings.</p>
7.3.20	<p>Other considerations on the insolvency effect discount</p>	
		<p>„BCP equity valuation:</p> <ul style="list-style-type: none"> • The sale of the Group's equity stake in BCP in the Relevant Alternative presented in the BCG Comparator Report is subject to a 20% insolvency effect discount
		<p>Due to the differences between disposal processes of real estate under solvent conditions and in German insolvency proceedings described under 5. above,</p>

	<p>applied to the equity interest, given the administrator is assumed to be in a less favourable negotiation position.</p> <ul style="list-style-type: none"> Based on a review of the Knight Frank Report, the 5% insolvency discount proposed concerning the rest of the Group's assets also appears reasonable regarding BCP. However, based on BCP being a less material source of value in the Relevant Alternative than the rest of the Group's assets, and therefore out of scope in the analysis undertaken by Knight Frank, the BCP assumptions are unchanged in my study (i.e., held constant at the BCG assumptions)." (cp. 5.30ff.;Rickleton Report) 	<p>we assess the insolvency discount for yielding properties at 25%.</p>
7.3.21	<p>"Other assumptions: A wide range of other assumptions and calculations form part of the Relevant Alternative analysis undertaken by BCG, e.g., in relation to aspects such as insolvency fees, process costs and default interest. I have considered certain other assumptions at a relatively high level and concluded that they are unlikely to be material to outcomes compared to the valuation of yielding and development assets. Accordingly, in my calculations, these assumptions are unchanged from BCG's approach." – (cp. 5.32ff.;Rickleton Report)</p>	<p>The costs of the proceedings alone (consisting of fees for the insolvency administration, advisors, agents, etc.) must be assumed to be at least 10% (e.g., agents 3% alone).</p>
7.3.22	<p>Conclusions on insolvency discount rationale</p> <p>"There are several reasons set out above as to the rationale for the insolvency discount being less than that presented in the BCG Comparator Report and reasons why the gap between projected sale proceeds under the Relevant Alternative as compared with under the Restructuring Plan may well be relatively narrow. In summary:</p> <ul style="list-style-type: none"> An administrator is responsible for seeking to maximise value (to 	<p>Of particular importance for the influence on the sales process and thus on the achievable ratio is the financing structure. In this case, too, a classic financing structure was chosen. This is characterised by mortgage-backed loans at the level of the project and property companies as well as SUNs at the holding level.</p> <ul style="list-style-type: none"> In the event of the holding company's insolvency, it can be

<p>the extent practicable), and a creditors' committee must approve material disposals. A creditors' committee would have a rationale to seek to maximise value and may object to a fire sale of the assets.</p> <ul style="list-style-type: none"> • The administrator has no time pressure to sell assets quickly or to any specified timeline (albeit an assessment of holding costs versus potential proceeds would be expected to form part of an administrator assessment); an administrator could be expected to approach the disposal of assets of this nature in an orderly manner. However, under the Restructuring Plan, investments need to be sold to meet debt repayment schedules, and the planned disposal timeframe is shorter than under the Relevant Alternative. • There may be an immaterial difference in buyers' value on representations and warranties in a managed wind-down versus the limited representations and warranties that would be available from an insolvency administrator. Further, the nature of the presentations and warranties required for assets of this nature are likely to be capable of being addressed via diligence and/or insurance. • Many of the development assets are effectively already in an 'insolvency state' given that development work has been on hold for an extended period. Certain other development assets are effectively just land assets, and it is difficult to see that a land sale should attract a material insolvency discount." (cp. 5.33.;Ricketton Report) 	<p>assumed that all or at least a large part of the project and property companies would also have to file for insolvency. Each of these subsidiaries will be wound up in separate insolvency proceedings with a different creditor structure and separate creditors' committee. Thus, the SUNs are not direct creditors in the individual insolvency proceedings of the subsidiaries, are not represented in the creditors' committees and de facto have no or only very limited influence on the realisation of the properties.</p> <ul style="list-style-type: none"> • In fact, the secured creditors at the level of the project and property companies decide on the realisation of the assets. Naturally, these creditors are primarily interested in the satisfaction of their outstanding claims and have no original interest in proceeds exceeding these claims. • In the proceedings we handle, we therefore regularly see that, at the level of the project and property companies, offers are accepted that lead to a sustainable satisfaction of the secured creditors and only rarely are sales proceeds achieved that exceed the claims of the secured creditors. Regardless of the actual value of the assets, the subordinated creditors or SUNs are de facto at a clear structural disadvantage in the decision-making process on the sale, which has a value-reducing effect on their quota. • While an administrator is obliged to maximise value, he is also liable to creditors if binding offers that would have satisfied
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	<p>secured creditors are not accepted and only a low sale price can later be obtained.</p> <ul style="list-style-type: none"> • we observe that currently, for development projects where the construction phase has not yet started, residual approximate values are no longer paid, but the land is valued without the development.
7.3.23	<p>“Knight Frank has analysed their view of the insolvency sale discounts to yielding asset values and concluded on a 5% discount. In respect of development assets, depending on the status of the asset Knight Frank has applied an asset-specific discount. This is reasonable based on my evaluation of the forgoing points.” (cp. 5.34.;Ricketton Report)</p> <p>As mentioned, I assume a discount of approx. 25% for existing properties. We observe significantly higher discounts for the sale of development properties in insolvency. Here we are seeing a virtual standstill in transactions. Planning is hardly priced in. No positive purchase prices are being achieved for share deals.</p>

8 Scenario: LTV covenant tripped, and Adler Group shares transferred to creditor-owned bid

- 8.1. In addition and in relation to the scope of this report outlined in section 1.5, I was asked to provide my expert opinion regarding a scenario in which an event of default re the LTV covenant occurred in Q4/2024. As a potential consequence, all shares of the Adler Group would be transferred to a special purpose vehicle ("Bidco") controlled by the creditors. The specific question asked was whether in my professional opinion, I believe that Insolvency Discounts applicable to the Relevant Alternative (i.e. an insolvency scenario) would also apply to this scenario.
- 8.2. Insolvency Discounts and contributing factors have been extensively discussed in section 5 of this report. Below, I shall summarily comment on those factors and as to whether a transfer to a Bidco would trigger any of those factors.
- 8.3. I have worked for creditors in such a scenario, having previously set up, controlled, and operated bidcos. I also set up bidcos in distressed situations for and on behalf of stakeholders other than creditors, including customers, large industrial enterprises, and employees.
- 8.4. Examples of this work include:
 - a) Bidco assuming control of Primacom, Germany's fourth largest cable operator, €390m of syndicated debt on behalf of creditors.

- b) Bidco assuming control of Deutsche Lichtmiete AG, industrial services group, €200m of bonds and bilaterals on behalf of bondholders.
- c) Bidcos taking ownership of approximately 30 vessels, German ship operators, >€600m of bank debt, on behalf of ship finance banks
- d) Bidco assuming control of Neue Halberg Guss, Europe's 3rd largest grey iron foundry, on behalf of General Motors, VW Group, Daimler, Deutz, Opel, and IG Metall.
- e) Bidco assuming control of Industriecenter Obernburg, the industrial park and power generation on behalf of syndicated loan creditors.
- f) Bidco assuming control of Makro Cash & Carry Belgium, former Metro AG subsidiary, €700m turnover, 1,800 employees.

8.5. I would like to point out that my experience does not include bidcos in real estate situations. To the best of my knowledge, in my professional experience in Germany such problems did not exist in any material numbers or volume, given the favourable market environment for German real estate over the past ten years.

8.6. However, I believe that it is not implausible to infer from market reactions, most importantly customers (comparable to real estate investors) and supplier reactions, in the above cases that a change of control to a Bidco does not cause the same reactions as one would experience in insolvency. The opposite is the case, as external stakeholders consider such a move stabilising.

8.7. In more detail and from my experience, the ramifications of a Bidco scenario on contributing factors to Insolvency Discounts are as follows:

Factor contributing to Insolvency Discounts	Significance in Bidco scenario
Time available	Timetable <i>post transfer of shares</i> more relaxed as fixed maturity dates no longer exist (or amendments agreed with Bidco, which would effectively be under the control of the SUNs)
Image/Interested parties/Investor universe	Change of control takes place on upper levels of current group structure (presumably Adler RE), disposals on project entity level should not be affected, no conceivable change to disposals under solvent wind-down conditions
Public data / access	No conceivable change to disposals under solvent wind-down conditions
Exclusivity	No conceivable change to disposals under solvent wind-down conditions
Condition of the property	No conceivable change to disposals under solvent wind-down conditions

Warranties / guarantees	No conceivable change to disposals under solvent wind-down conditions. Due to the reduced indebtedness of the group as a result of an effective debt-to-equity swap, increased creditworthiness of potential holding guarantees
Real estate transfer tax / RETT blocker	No conceivable change to disposals under solvent wind-down conditions. Subject to further tax review, RETT will fall due also on Bidco level unless mitigated by RETT blocker
Liability of insolvency administrator	n.a.
Influence of secured creditors	No conceivable change to disposals under solvent wind-down conditions. Secured creditors on project entity level will likely want to engage with new shareholders understanding new strategy
Cost of sale	No conceivable change to disposals under solvent wind-down conditions.
Influx of sales proceeds	No conceivable change to disposals under solvent wind-down conditions.

- 8.8. In summary, I see no conceivable change of the disposal conditions between a solvent wind-down under the current ownership and a Bidco shareholder. In other words, no Insolvency Discounts should apply under a Bidco scenario.
- 8.9. As to creditor-controlled bidcos, another aspect should be given consideration – once having assumed control – in Germany through structures such as the RIVA structure or double-sided trusteeships due to the inherent equitable subordination risk – creditors as the new shareholders are in a position to restructure their debt in a way that allows for equity-like returns as much as (former) creditors bear equity risk.
- 8.10. I conclude that the LTV covenant, as provided for in the Plan, and the possibility of assuming control of the Adler group in the event of default provides significant protection without being subject to Insolvency Discounts discussed in this report.

9 Expert's declaration

9.1 Declaration

- 9.1.1 I understand that my duty in providing written reports and giving evidence is to help the Court and that this duty overrides any obligation to the party who has engaged

me. I confirm that I have complied with this duty and will continue to comply with this duty.

- 9.1.2 I have endeavoured to include in my report those matters of which I know or have been made aware that might adversely affect the validity of my opinion.
- 9.1.3 This report has been prepared following Part 35 of the Civil Procedure Rules and its Practice Direction, the Guidance for the Instruction of Experts in Civil Claims 2014 and the Commercial Court Guide.
- 9.1.4 Without forming an independent view, I have not included or excluded anything which has been suggested to me by others (in particular, my instructing lawyers).
- 9.1.5 I will notify those instructing me immediately and confirm in writing if for any reason my report requires any correction or qualification.
- 9.1.6 I understand that:
 - a) My report, subject to any corrections before swearing as to its correctness, will form the evidence to be given under oath or affirmation;
 - b) I may be cross-examined on my report by a cross-examiner assisted by an expert; and
 - c) I will likely be the subject of adverse public criticism by the judge if the Court concludes that I have not taken reasonable care in trying to meet the standards set out above.
 - d) I confirm that I have not entered into any arrangement where the amount or payment of my fees is dependent on the outcome of the case.

9.2 Statement of compliance and truth

9.2.1 I confirm that I have made clear which facts and matters referred to in this report are within my knowledge and which are not. Those that are within my knowledge I confirm to be true. The opinions I have expressed represent my accurate and complete professional opinions on the matters to which they refer.



Frank Günther

24 March 2023

Theatinerstraße 36

80333 München

Germany

10 Appendix

10.1 Appendix 1 – Instruction letter

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23 March 2023

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Dear Mr Günther,

In the matter of: AGPS BondCo PLC

1. INTRODUCTION

1.1 White & Case acts for Adler Group S.A. (the “Parent Company”) and its direct and indirect subsidiaries (collectively the “Group”) in connection with *inter alia* a proposed restructuring plan under Part 26A of the Companies Act 2006 (the “Plan”). The Plan will be proposed by AGPS BondCo PLC (the “Plan Company”), a newly incorporated English subsidiary of the Parent Company.

1.2 The purpose of the Plan is to obtain the consents required to effect certain amendments to the terms and conditions of the SUN Notes (as defined and detailed in Appendix 1) to enable the Group to incur additional financial indebtedness and, among other things, extend the maturity of certain of the SUN Notes by 12 months (the “Proposed Amendments”). The Plan Company, as well as the Group, considers the Proposed Amendments are necessary in order for it to continue to service its debt obligations and install a stable platform for the Group, which will safeguard its business, operations and employees.

1.3 The purpose of this letter is to set out your instructions in respect of the independent expert report that you have agreed to submit in connection with the Plan Company’s application to the English High Court to sanction the Plan.

2. BACKGROUND

2.1 The background and details concerning the Plan, the Plan Company and the Group are set out in Appendix 1 to this letter.

2.2 A non-consenting minority of Plan Creditors or “Ad Hoc Group” (the “AHG”) have challenged the Plan. The evidence filed on behalf of the AHG in the English Court proceedings includes, among other documents, the expert report of Lisa Rickelton of FTI Consulting LLP dated 18 March 2023 (the “Rickelton Report”). The Rickelton Report sets out, *inter alia*, Ms Rickelton’s opinion of the “insolvency discount” that would apply to disposals of the Group’s real estate portfolio in the Relevant Alternative (i.e. in an insolvency scenario if the Plan is not sanctioned).

3. INSTRUCTIONS FOR THE EXPERT

3.1 You are requested to provide an independent expert opinion by way of reply to this aspect of the Rickelton Report. In particular, you are requested to provide your independent expert opinion on the following:

(a) whether the factors identified at pages 76 to 78 of the BCG Comparator Report as giving rise to an insolvency discount in the Relevant Alternative were valid and correct;

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(b) whether you agree with Ms Rickelton's conclusion that the factors she considers at paragraphs 5.9 to 5.34 of the Rickelton Report indicated that the insolvency discount used in the BCG Comparator Report is overstated; and

(c) your opinion as to the factors that may give rise to an insolvency discount and the level of discount (if any) that would be likely apply to disposals of the Group's real estate portfolio in the Relevant Alternative.

3.2 Your report (including any exhibits and supporting materials) must be finalised and filed by 6pm on 24 March 2023. The Plan Company's application to sanction the Plan will be heard by the English High Court at the Plan Sanction Hearing. This is scheduled to take place in London from 3 to 5 April 2023. You are requested to attend the Plan Sanction Hearing to answer any questions from Counsel for the Plan Company and AHG on your report.

3.3 You are entitled to ask the Court for directions to assist in carrying out your functions if you feel that this is necessary. Please do let me know if you intend to make an application for directions. I may be able to help with the matter, either by resolving any difficulties you may be experiencing and thereby avoiding the need to seek directions, or by helping you to formulate the request.

3.4 If you wish to seek directions in any event, I should mention that, unless the Court has directed otherwise, you are required under the English procedural rules to:

- let me have a copy of your proposed request for directions at least seven days before filing it at Court; and
- provide all other parties with a copy of your request at least four days before the request is filed.

4. DOCUMENTS

4.1 You are provided with:

- the documents lodged with the English Court by the Plan Company on 20 February 2023;
- the Updated Boston Consulting Group Comparator Report dated 15 March 2023;
- the Rickelton Report; and
- the expert report of Christoph Gerlinger of Knight Frank Valuation & Advisory dated 18 March 2023.

5. CONTENTS OF THE EXPERT'S REPORT

5.1 In preparing your report, please review the enclosed Part 35 of the English Civil Procedural Rules (the "CPR"), Practice Direction 35 (particularly paragraphs 2.1 to 2.5 and paragraphs 3.1 to 3.3) and the enclosed "Guidance for the instruction of experts in civil claims". These documents set out the requirements that must be followed in order to ensure that the report is compliant with the English Civil Procedure Rules.

5.2 In particular, we would draw your attention to the overriding duty to the Court (CPR Rule 35.3 and paragraph 3.2(9)(a) of the Practice Direction to CPR Part 35). Where an expert is appointed by a party to litigation, the expert has an overriding duty to assist the Court on matters within his or her expertise. This duty overrides any obligation to the person who instructed the expert or by whom the expert is being paid.

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5.3 You will see from CPR 35.10 and paragraph 3.2 of Practice Direction 35 that your report should:

- (a) give details of your qualifications;
- (b) give details of any literature and other material on which you have relied in preparing the report;
- (c) state the substance of all the material instructions, whether written or oral, received from this firm;
- (d) state the substance of all facts which are material to the opinions expressed in the report, and make clear which of the facts in your report are within your own knowledge;
- (e) state who carried out any examination, measurement, test or experiment which you have used for the report, give the qualifications of that person, and say whether or not the test or experiment has been carried out under your supervision;
- (f) where there is a range of opinion on the matters with which you deal in your report, summarise the range of opinion and give reasons for your own opinion;
- (g) contain a summary of the conclusions which you have reached;
- (h) if you are not able to give an opinion without qualification, state the qualification; and
- (i) contain a statement that you understand your duty to the Court and that you have complied with that duty, and are aware of the requirements of CPR 35, Practice Direction 35 and the Guidance for the Instruction of Experts in Civil Claims 2014.

5.4 In addition to the requirements for the contents of the report in (a) to (i) above, your report should end with a statement of truth which reads as follows:

"I confirm that I have made clear which facts and matters referred to in this report are within my own knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

5.5 You should let us know immediately if, at any time after producing your report, you change your opinion on the matters contained therein. It is also important for you to let us know promptly if you need to update the report after it has been filed at Court, for example because new evidence has come to light, so that we can consider whether an amended version of the report or a supplementary report should be served.

5.6 You may be aware, in certain circumstances, experts may be held liable for costs and do not enjoy immunity from civil proceedings. Proceedings for contempt may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. Please do let us know if it would be helpful to discuss these points further.

6. QUESTIONS

6.1 We look forward to receiving your report.

6.2 Should you have any questions arising out of these Instructions, please do not hesitate to contact Charles Balmain, Christian Pilkington, Ben Davies and/or cbalmain@whitecase.com

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(020 7532 1807), cpilkington@whitecase.com (020 7532 1208) or bdavies@whitecase.com (0207 532 1216) of this office.

White & Case LLP.

White & Case LLP

Encl.

- Part 35 of the English Civil Procedural Rules
- Practice Direction 35 of the English Civil Procedural Rules
- Guidance for the instruction of experts in civil claims, Civil Justice Council 2014

White & Case LLP
5 Old Broad Street
London

EC2N 1DW

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Appendix 1

1. BACKGROUND TO THE PLAN COMPANY AND GROUP

The Plan Company

- 1.1 The Plan Company is a public limited company incorporated under the laws of England and Wales. The Plan Company was registered with Companies House on 23 December 2022 under company number 14556926. The Plan Company is resident in the United Kingdom for tax purposes and its centre of main interests is located in England. Its registered office is at 16 Eastcheap, London, EC3M 1BD, United Kingdom. The Plan Company is a direct, wholly-owned subsidiary of the Parent Company.
- 1.2 The Plan Company was incorporated for the purpose of promoting the Plan and, following the Issuer Substitution (as defined and detailed at paragraphs **Error! Reference source not found.** and **Error! Reference source not found.** below), it is liable as issuer in respect of the SUN Notes. Prior to the Issuer Substitution, the Parent Company was the issuer of the SUN Notes.

The Group

- 1.3 The Group is specialised and focused on the purchase, management and development of income producing multi-family residential real estate, with a portfolio of approximately 26,219 residential rental units throughout Germany and a development pipeline of approximately 32,000 residential units in Germany's top cities.
- 1.4 The Group is pursuing the Plan as part of a broader restructuring of its financial obligations to address its tightening liquidity position and upcoming debt maturities. There are certain covenants in the Group's debt documents restricting the ability of the Group to raise additional debt financing, which has limited the Group's refinancing options and has increased reliance on asset disposals to generate the necessary funds to service the Group's financial liabilities as they fall due. However, increasingly challenging conditions in the German residential real estate market mean that the Group was and is struggling to realise sale proceeds on a tight timetable and at optimal levels.
- 1.5 The Parent Company, a Luxembourg-based company, with its shares admitted to trading on the regulated market segment of the Frankfurt Stock Exchange, is the parent company of the Group and is the issuer of certain debt securities detailed below. The Parent Company holds a direct 96.72 per cent. interest in Adler Real Estate AG ("Adler RE") and a direct or indirect interest of in total 96.88 per cent. in Consus Real Estate AG ("Consus"), both German-incorporated companies currently listed on the Frankfurt Stock Exchange and, with respect to Adler RE, the issuer of certain other debt securities. White & Case understand that the Parent Company also holds an interest in various Dutch, German and Luxembourg 'PropCos'.
- 1.6 Further background to the Group is set out in the PSL at paragraphs **Error! Reference source not found.** to **Error! Reference source not found.** and we ask that you refer to these for further detail.
- 1.7 A simplified structure chart in relation to the Group is annexed to these Instructions.

2. CAPITAL STRUCTURE

Issuer Substitution

- 2.1 The SUN Notes were originally issued by the Parent Company. Following the decision to proceed with the Plan, in accordance with the terms and conditions of each series of SUN Notes, the Plan Company was substituted in place of the Parent Company as issuer of the SUN Notes (the "Issuer Substitution"). The Issuer Substitution was completed on 11 January 2023 and

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notified via the paying agent under each series of the SUN Notes (BNP Paribas Luxembourg) to the common depository who has amended the global deeds representing the SUN Notes accordingly and to the SUN Noteholders on the same date via a notice published on the Luxembourg Stock Exchange. On 12 January 2023, such announcement was also posted on the Clearing Systems and on the Group's website.

2.2 In accordance with the terms and conditions of the SUN Notes, the Parent Company issued irrevocable and unconditional guarantees in relation to the obligations and liabilities under the SUN Notes, including (but not limited to) payment of the principal of, and interest on, the SUN Notes (the "Parent Company Guarantees").

Debt Obligations of the Plan Company

2.3 Following the Issuer Substitution, the Plan Company became the issuer of each of the following series of senior unsecured notes (together, the "SUN Notes" and the holders of a proportionate co-ownership or other beneficial interest or right in the SUN Notes, the "SUN Noteholders"):

- (a) €400,000,000, 1.500% senior unsecured notes due 26 July 2024 (the "2024 SUNs");
- (b) €400,000,000, 3.250% senior unsecured notes due 5 August 2025;
- (c) €700,000,000, 1.875% senior unsecured notes due 14 January 2026;
- (d) €400,000,000, 2.750% senior unsecured notes due 13 November 2026;
- (e) €500,000,000, 2.250% senior unsecured notes due 27 April 2027; and
- (f) €800,000,000, 2.250% senior unsecured notes due 14 January 2029 (the "2029 SUNs").

2.4 The SUN Notes are each senior unsecured liabilities of the Plan Company ranking *pari passu* between themselves and benefit from the Parent Company Guarantees (but are not guaranteed by any other member of the Group). The terms and conditions of the SUN Notes are each governed by the laws of Germany and are substantially identical, save for certain differences in economic terms as set out in paragraph **Error! Reference source not found.** below and other minor differences (principally between the 2024 SUNs and the remaining SUN Notes).

2.5 For the purposes of these Instructions and the advice sought from you, certain key terms of the SUN Notes and the rights of the SUN Noteholders which are most relevant are summarised below:

Indebtedness	Issuer	Principal Amount	Coupon	Maturity	Required majority for material amendments	Governing law
2024 SUNs	AGPS BondCo PLC	€400,000,000	1.500% p.a.	26 July 2024	75% of the voting rights participating in the vote	German law
2025 SUNs		€400,000,000	3.250% p.a.	5 August 2025		
January 2026 SUNs		€700,000,000	1.875% p.a.	14 January 2026		
November 2026 SUNs		€400,000,000	2.750% p.a.	13 November 2026		
2027 SUNs		€500,000,000	2.250% p.a.	27 April 2027		
2029 SUNs		€800,000,000	2.250% p.a.	14 January 2029		

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Debt Obligations of the Parent Company

- 2.6 The principal external debt obligations of the Parent Company are comprised of €165,000,000 convertible notes issued by the Parent Company, due 23 November 2023, and a secured loan from Commerzbank AG of approximately €97,000,000, due 31 March 2028.
- 2.7 In addition to its external debt obligations, the Parent Company has issued the Parent Company Guarantee and the Loan Notes to the Plan Company, both in connection with the Issuer Substitution, with equivalent payment provisions and obligations to the SUN Notes.
- 2.8 The Parent Company is also a guarantor under €24,500,000 of unsecured promissory note loan agreements (*Schuldscheindarlehensvertrag*) ("SSDs") issued by ADO Lux Finance S.à r.l., has issued a guarantee to Consus in the aggregate amount of €10,000,000 and is the borrower under the €265,000,000 3.5 per cent. Intra-Group Loan granted by Adler RE, the maturity of which has been extended to 15 April 2023. In connection with the previous extension of the maturity date of the Intra-Group Loan, the Parent Company also provided security in favour of Adler RE and the interest rate was increased to 5.16 per cent. per annum.

Debt Obligations of Adler RE, Consus and property-owning subsidiaries

- 2.9 The principal external debt obligations of Adler RE comprise the following series of senior unsecured notes (together, the "Adler RE SUNs"):
 - (a) €500,000,000, 1.875% senior unsecured notes due 27 April 2023 (the "Adler RE 2023 SUNs");
 - (b) €300,000,000, 2.125% senior unsecured notes due 6 February 2024 (the "Adler RE 2024 SUNs"); and
 - (c) €300,000,000, 3.000% senior unsecured notes due 27 April 2026 (the "Adler RE 2026 SUNs").
- 2.10 The Adler RE SUNs are senior unsecured liabilities of Adler RE ranking *pari passu* between themselves and do not have the benefit of any guarantees from the Parent Company or any other member of the Group. The terms and conditions of the Adler RE 2023 SUNs and the Adler RE 2026 SUNs are governed by German law, and the Adler RE 2024 SUNs have been issued pursuant to a New York law-governed indenture.
- 2.11 The principal external debt obligations of Consus and its subsidiaries comprise €261,000,000 of secured debt owed to third parties, and certain intra-Group debt obligations.
- 2.12 In addition, (i) approximately €955,000,000 of secured debt is owed by property-owning subsidiaries of the Parent Company (other than Adler RE, Consus and their respective subsidiaries), (ii) approximately €1,093,000,000 of secured debt is owed by property-owning subsidiaries of Adler RE and (iii) approximately €24,500,000 of SSDs with a variable maturity, are owed by ADO Lux Finance S.à r.l., a wholly owned subsidiary of the Parent Company.

3. THE FINANCIAL ISSUES FACING THE GROUP

- 3.1 The residential and commercial real estate market in Germany has been and continues to be impacted by various economic, political and financial factors. Throughout 2022, the inflation rate in Germany spiked, reaching 10 per cent. in the fourth quarter. In addition, supply chain disruptions, rising energy and raw material (including building material) prices caused by the war in Ukraine and the ongoing impacts of the COVID-19 pandemic had a significant negative impact on the German economy. The current domestic and global economic downturns, high interest rates and decreased business confidence have resulted in reduced demand for residential

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and commercial real estate in Germany, the core businesses of the Group, which has significantly and adversely affected the Group's business.

- 3.2 For the nine months ended 30 September 2022, the Group's loan-to-value (indicating the degree to which the net financial liabilities are covered by the fair market value of the real estate portfolio across the Group) increased to 59.9 per cent., reaching its highest level since 2018, mainly due to the asset value decline resulting from the effects of the above mentioned market downturn.
- 3.3 In October 2021, as part of a short seller attack on the Group, a report was published making various allegations against the Group. Subsequently, during the first quarter of 2022, the Group's auditor, KPMG Luxembourg S.A., resigned its position as auditor, claiming that the preconditions for performing a statutory audit of the 2022 financial statements were not met. In June 2022, the Group launched an audit tender but was unable to identify any candidates to replace the Group's previous auditor. Due to the difficulties that it faced when attempting to appoint a new auditor, the Group asked the District Court of Berlin to appoint an auditor for Adler RE by court order, hoping that such auditor would also agree to become the auditor of the Group. On 9 January 2023, the District Court of Berlin appointed KPMG AG Wirtschaftsprüfungsgesellschaft as Adler RE's auditor. This judicial appointment required the acceptance of the audit mandate by the auditor, which KPMG AG Wirtschaftsprüfungsgesellschaft rejected on 11 January 2023. As of the date of this Letter, the Group does not have an auditor and is continuing to assess its options and work towards engaging an auditor.
- 3.4 To address the negative impact from the economic downturn on the Group's business performance and the related worsening liquidity position, the Group has been evaluating its sources of liquidity. Certain covenants in the Group's debt documents restrict the ability of the Group to raise additional debt financing and to refinance its existing obligations. Such restrictions have increased reliance on asset disposals to meet the Group's liquidity needs and enable the Group to continue to service its financial liabilities as they fall due. The Group has made several asset sales over the course of 2021 and 2022 in an attempt to alleviate its financial difficulties, but has found it increasingly difficult to carry out asset sales at satisfactory prices.
- 3.5 The Group does not consider it to be in the best interests of the Group companies, creditors and shareholders to sell assets at deep discounts in order to meet near-term maturities. In addition, under Luxembourg law and German law (as applicable), the members of the management board of the Parent Company or Adler RE may be held personally liable if the respective boards approve a sale of assets at deep discounts (particularly if a transaction deviates significantly from normal market conditions to the detriment of the company and there are no significant long-term benefits that could be reasonably expected to arise out of the sale).
- 3.6 Amongst other challenges, the Group is faced with a critical liquidity position in spring 2023, with the Adler RE 2023 SUNs due to be repaid in April 2023. If Adler RE fails to meet the upcoming maturity of the Adler RE 2023 SUNs, creditors under certain other financing arrangements, including the SUNs, will be entitled by cross-default provisions to terminate those financing arrangements and declare the relevant debts immediately due and payable.
- 3.7 The Board has concluded that the Group's financial difficulties will, unless the Plan is implemented, affect the Plan Company's ability to carry on business as a going concern. The Parent Company provides the sole source of funding to the Plan Company. In turn, the Parent Company is heavily reliant on dividends and intra-group payments from other Group companies to be able to meet its payment obligations. Accordingly, a liquidity shortfall within the Group would affect the ability of the Parent Company to meet its obligations to the Plan Company under the Loan Notes, which in turn would jeopardise the ability of the Plan Company to meet its obligations under the SUNs.

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3.8 The Group engaged legal and financial advisers to evaluate the Group's options regarding the implementation of a financial restructuring transaction to stabilise the financial performance of the Group and support its long-term future. In summary, the Plan Company is seeking to implement the Plan as a key element of the broader restructuring solution for the Group that will provide means to raise finance, extend debt maturities and stabilise other aspects of the Group's capital structure.

3.9 A more detailed and comprehensive discussion of the Group's financial difficulties is set out at section 7 of the PSL and we ask that the Expert refers to this for further detail.

Lock-Up Agreement

3.10 In the second half of 2022, the Group and its advisers commenced discussions with the steering committee of an ad-hoc group of SUN Noteholders and its advisers, which steering committee represents approximately 46 per cent. of the SUN Notes (the "SteerCo"), regarding a proposed restructuring of the Group (the "Restructuring").

3.11 On 25 November 2022, certain parties including the Parent Company, Adler RE, Consus and members of the SteerCo executed a lock-up agreement (the "Lock-up Agreement") to document their agreement as to the terms of the Restructuring. As part of the Restructuring, the SteerCo and the Group agreed that the provision of up to €937,500,000 of new funding (the "New Money Funding") by SUN Noteholders (and backstopped by the SteerCo) would provide the Group with the liquidity it needed to manage its upcoming debt maturities and pay any fees in connection therewith. To allow for the incurrence of the New Money Funding, it is necessary to amend the terms and conditions of the SUN Notes through the Proposed Amendments.

3.12 The Lock-Up Agreement contains various other terms and obligations and undertakings, and provides that the terms and conditions of various SUN Notes may be amended by way of Consent Solicitation (as defined and detailed below) or by an alternative means, including through the Plan, should the Consent Solicitation fail.

3.13 The Lock-Up Agreement also includes, among other things, the following undertakings of Participating Noteholders (as defined therein):

- (a) to vote in favour of the Proposed Amendments;
- (b) to vote in favour of certain changes to the Adler RE 2024 SUNs and the Adler RE 2026 SUNs;
- (c) not to transfer, assign or sell any of their locked-up SUN Notes to a person who is not a Participating Noteholder, unless such person accedes to the Lock-Up Agreement;
- (d) to waive certain events of default arising in connection with the SUN Notes; and
- (e) not to take certain enforcement actions for the term of the Lock-Up Agreement.

3.14 As of 26 January 2023 more than 67 per cent. of SUN Noteholders in aggregate have acceded to the Lock-Up Agreement.

Consent Solicitation

3.15 The SUN Notes are governed by German law. In accordance with the Lock-Up Agreement, the Group sought the consents required to make the Proposed Amendments consensually through a consent solicitation process under German law (the "Consent Solicitation"). The Consent Solicitation was launched on 2 December 2022 and the voting period ended on 19 December 2022.

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3.16 Under German law, a quorum of the noteholders representing at least 50 per cent. of the outstanding principal amount of each series of SUN Notes and the approval by a majority of at least 75 per cent. of the voting SUN Noteholders with respect to each series of SUN Notes is required for the implementation of the Proposed Amendments through a Consent Solicitation process. The Consent Solicitation for each series of SUN Notes was cross-conditional, whereby if one series of SUN Notes failed to reach the 75 per cent. threshold, the Proposed Amendments would not be effective for any other series.

3.17 On 8 December 2022, a group of SUN Noteholders with holdings concentrated in the 2029 SUN Notes, advised by Akin Gump LLP, Gleiss Lutz Hootz Hirsch PartmbB Rechtsanwälte Steuerberater and FTI Consulting Inc., announced that it intended to oppose the Consent Solicitation.

3.18 Despite the minority dissenting group, there was overwhelming support in favour of the Consent Solicitation and resolutions were passed with the required majority in five out of the six series of SUN Notes. In total, SUN Noteholders representing more than 78 per cent. of the nominal amount outstanding and more than 82 per cent. based on the total number of votes cast voted in favour of the Consent Solicitation. However, one series of SUN Notes, namely the 2029 Notes, did not reach the requisite majority vote in favour of the Consent Solicitation.

3.19 The following table summarises the results of the Consent Solicitation:

ISIN	Description of Notes	Outstanding Notes	% of Outstanding Notes Voted	% of Outstanding Notes Voting in Favour	% of Votes Cast in Favour ⁽¹⁾
XS1652965085	€ 400,000,000 1.500% Notes due 2024	€ 400,000,000	95.2%	93.3%	98.2%
XS2010029663	€ 400,000,000 3.250% Notes due 2025	€ 400,000,000	94.0%	86.7%	92.4%
XS228324231	€ 700,000,000 1.875% Notes due 2026	€ 700,000,000	94.2%	88.9%	94.8%
XS2248826294	€ 400,000,000 2.750% Notes due 2026	€ 400,000,000	94.8%	84.2%	89.0%
XS2336188029	€ 500,000,000 2.250% Notes due 2027	€ 500,000,000	96.0%	77.0%	82.1%
XS228325477	€ 800,000,000 2.250% Notes due 2029	€ 800,000,000	95.3%	54.9%	57.7%
Total		€ 3,200,000,000	94.9%	78.2%	82.9%

3.20 As the requisite number of holders of the 2029 Notes voted against the amendments, the conditions for execution described in the Consent Solicitation were not met and the Proposed Amendments were not validly adopted through the Consent Solicitation.

4. PART 26A OF THE COMPANIES ACT 2006

4.1 A restructuring plan is a statutory procedure under English law pursuant to Part 26A of the Companies Act 2006 ("Part 26A") (a copy of which is appended to these Instructions) which allows a company to agree a compromise or arrangement with its creditors (or classes of creditors), and for the terms of that compromise or arrangement to bind any non-consenting or opposing minority creditors (or, if applicable, classes of creditors) who are affected by the restructuring plan.

4.2 In June 2019, the EU published a directive on preventative restructuring frameworks (the "Directive"). The Directive sought to introduce a minimum standard among EU Member States for preventative restructuring frameworks available to debtors in financial difficulty and to provide measures to increase the efficiency of restructuring procedures. It was envisaged that these new standards, once implemented, would signal a move for Member States further in the direction of debtor-in-possession-type insolvency regimes such as Chapter 11 bankruptcy

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in the United States – a procedure which has historically been perceived as a benchmark for European restructuring regimes. European governments took inspiration from the Chapter 11 bankruptcy process and adapted it to suit their own domestic markets and existing legislative frameworks. For example, the German government enacted a new restructuring regime; the “Stabilization and Restructuring Framework of Companies Act” (“StaRUG”).

- 4.3 As a consequence of the UK’s withdrawal from the EU, the UK was not obliged to implement any of the measures set out in the Directive. However, the new restructuring tools introduced by Part 26A go a long way towards satisfying the objectives and aspirations of the Directive. As such, a restructuring plan under Part 26A shares common features with other European preventative restructuring proceedings, which are listed in Annex A of the EU Insolvency Regulation, including (for example) the German StaRUG proceedings.
- 4.4 A restructuring plan may be proposed by a company that has encountered, or is likely to encounter, financial difficulties that are affecting, or may affect, its ability to carry on business as a going concern. A restructuring plan should have the purpose of eliminating, reducing, preventing or mitigating the effect of any of the financial difficulties faced by the proposing company.
- 4.5 If the Court is satisfied at the convening hearing that the proposed restructuring plan has a prospect of being approved by plan creditors, and that the proposed class or classes of plan creditors for voting purposes have been correctly constituted, the Court will order the plan meeting or meetings for the relevant class or classes of creditors to be convened.
- 4.6 A restructuring plan will take effect between a company and its creditors (or the relevant class or classes of them) and become binding on all the creditors to whom it applies if:
 - (a) the restructuring plan is approved by at least 75 per cent. in value of the creditors in each class of creditors present in person or by proxy and voting at the relevant plan meeting convened to consider the restructuring plan; or
 - (b) if the restructuring plan is not approved by at least 75 per cent. in value of the creditors in any class of creditors present in person or by proxy and voting at the relevant plan meeting convened to consider the restructuring plan:
 - (i) the Court is satisfied that, if it were to sanction the restructuring plan, none of the members of any dissenting class would be any worse off than they would be under the relevant alternative to the restructuring plan; and
 - (ii) the restructuring plan has been approved by a number representing at least 75% in value of a class of creditors present and voting (either in person or by proxy) at a plan meeting who would receive payment or have a genuine economic interest in the plan company in the event of the relevant alternative to the restructuring plan;
 - (c) and in each case, the court exercises its discretion to sanction the restructuring plan at the sanction hearing; and
 - (d) an official copy of the order sanctioning the restructuring plan is delivered to the Registrar of Companies for England and Wales for registration.
- 4.7 If a restructuring plan becomes effective, it will bind the plan company and all classes of plan creditors according to its terms, including those plan creditors who did not vote on the restructuring plan or who voted against it as a matter of English law. This is the case even where the contracts under which the debts are owed are not governed by English law. In the present case (as detailed below), the Plan Company proposes to implement the Proposed

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Amendments to the SUN Notes, which are governed by German law, and as a matter of English law the Proposed Amendments can be effected through a restructuring plan.

4.8 The principal differences between a restructuring plan under Part 26A and a scheme of arrangement under Part 26 are: (i) the voting thresholds under Part 26A do not require a majority in number of creditors within a class to vote in favour of the plan; (ii) the possibility for cross class cram-down, which is not available in respect of schemes of arrangement; (iii) the 'financial difficulties' requirement for proposing a restructuring plan; (iv) the requirement that the purpose of a restructuring plan must be to eliminate, reduce or prevent, or mitigate the effect of such financial difficulties; and (iv), consequently, the similarities of a restructuring plan under Part 26A to other European preventative restructuring proceedings which are listed in Annex A of the EU Insolvency Regulation.

5. **THE PLAN**

5.1 Following the unsuccessful Consent Solicitation, the Group now seeks to implement the Proposed Amendments through the Plan.

5.2 The primary objective of the Plan is to deliver the consents required to effect the Proposed Amendments so that the Restructuring may be successfully implemented. As noted in paragraph **Error! Reference source not found.** above, the SUN Notes do not currently allow for the raising of additional debt financing. The SUN Notes must therefore be amended in certain respects before the incurrence of the New Money Funding in connection with the Restructuring.

5.3 If the Plan becomes effective, it will bind the Plan Company and all classes of Plan Creditors according to the Plan's terms, including those Plan Creditors who did not vote on the Plan or who voted against it.¹

The Proposed Amendments

5.4 The Proposed Amendments include the following key amendments (unless otherwise stated, such amendments will apply to all series of the SUN Notes):

(a) amendments aimed at reducing the liquidity risk presented by upcoming payment obligations, for example:

(i) the extension of the maturity of the 2024 Notes from 26 July 2024 to 31 July 2025;² and

(ii) the suspension of interest payments for a period of two years, with interest payable on the SUN Notes to be capitalised until 31 July 2025; in return, the SUN Notes will benefit from a coupon uplift of 2.75 per cent. until 31 July 2025, after which time the coupon will revert to its current level;

(b) amendments permitting the incurrence of additional indebtedness, including:

(i) a carve-out to allow the Group to incur the New Money Funding, which will be used to repay certain of its existing obligations; and

(ii) the modification of the negative pledge covenant to allow for the creation of security on specified other indebtedness, and the provision of guarantees by certain subsidiaries of the Group, so that the New Money Funding and other

¹ The Plan Company does not have any other creditors apart from the Plan Creditors.

² The 2024 Notes are the only series of SUN Notes in respect of which a maturity extension will occur.

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debt obligations may be guaranteed and secured over certain of the Group's assets;

- (c) amendments to the reporting covenant, to temporarily alleviate the reporting obligations placed on the Group in order to address the risk of the Group failing to obtain an audit of its financial statements by the end of April 2023; and
- (d) amendments to certain other restrictive covenants aimed at supporting the new capital structure, including:
 - (i) the inclusion of a financial maintenance covenant tested quarterly from 31 December 2024, pursuant to which a maintenance loan-to-value ratio of 87.5 per cent. until the end of 2025 and 85 per cent. thereafter must be complied with;
 - (ii) certain additional restrictions on debt incurrence;
 - (iii) an obligation not to declare or pay any dividend or make any other payment or distribution to any of the Group's shareholders; and
 - (iv) an amendment of the change of control threshold from 50 per cent. of the share capital or voting rights of the Plan Company to 33.3 per cent.

5.5 The Proposed Amendments do not provide for any reduction in the quantum of the claims of the Plan Creditors under the SUN Notes. Under the Plan and following the Restructuring, the Plan Company anticipates that the SUN Notes will be repaid in full when due.

Implementation of the Proposed Amendments

- 5.6 The Plan, upon becoming effective in accordance with its terms (including sanctioning by the Court), will deem the Proposed Amendments to become immediately effective.
- 5.7 In addition (as a matter of precaution), the Plan authorises the Plan Company to take each step and enter into each document, in each case on behalf of each Plan Creditor pursuant to an English law power of attorney which will also be granted under the Plan as sanctioned by the Court (the "Power of Attorney"), that may be necessary to implement the Proposed Amendments, including the following documents:
 - (a) amendment agreements pursuant to which the Plan Creditors and the Plan Company unanimously confirm their respective consent to the Proposed Amendments (as obtained through the Plan previously sanctioned by the Court) in respect of each series of the SUN Notes, signed by the Plan Company on its own behalf and on behalf of each Plan Creditor (by virtue of the Power of Attorney) (each an "Amendment Agreement" and together, the "Amendment Agreements");
 - (b) a deed of release, a customary English law deed used to release (among others) the Plan Company, the Parent Company, advisers, directors and officeholders from liabilities owing to the Plan Creditors in connection with the Plan, signed by the Plan Company on its own behalf and on behalf of each Plan Creditor (by virtue of the Power of Attorney) (the "Deed of Release");
 - (c) any other document that may be required to give effect to the Proposed Amendments; and the subsequent step
 - (d) to deliver copies of (i) the Amendment Agreements, (ii) the Plan, (iii) the Court order sanctioning the Plan as registered with the Registrar of Companies for England and Wales, and (iv) such other documents as may be necessary to effect the Proposed

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Amendments, to the clearing systems *via* the paying agent under each series of the SUN Notes (BNP Paribas Luxembourg), following which the clearing systems will update their records to reflect the Proposed Amendments by attaching these copies, which include the revised terms and conditions of the SUN Notes in full form, to the global notes in respect of the SUN Notes.

5.8 Under the Power of Attorney referred to in paragraph **Error! Reference source not found.** above, each Plan Creditor will authorise the Plan Company and appoint the Plan Company as its agent and attorney from the date on which the restructuring plan is lodged and takes effect to enter into (on behalf of that Plan Creditor) the specified amendment documents (including the Amendment Agreements and the Deed of Release, and any further documents that may be required to give effect to the Proposed Amendments). The provision of such a power of attorney is customary in restructuring plans, to help facilitate the implementation of complex restructurings.

New Money Funding

5.9 Concurrently with the execution of the Lock-Up Agreement, on 25 November 2022 the Group also entered into commitment letters (each, a “Commitment Letter”) with the SteerCo (in such capacity, collectively, the “Backstop Providers”), pursuant to which the Backstop Providers committed to provide up to the full amount of the New Money Funding, subject to certain terms and conditions, including the completion of the Plan and the implementation of the Proposed Amendments.

5.10 Pursuant to the Commitment Letters, the New Money Funding will be raised in the form of notes to be issued by a newly incorporated SPV and subscribed for by SUN Noteholders that execute a Commitment Letter to provide the New Money Funding (the “New Money Providers”) with the relevant proceeds being on-lent by the SPV to the “Borrowers” (as defined in the Commitment Letters, consisting of the Parent Company and certain of its subsidiaries) by way of term loans.

5.11 The term loans comprise up to €937,500,000 senior secured loans maturing on 30 June 2025, consisting of:

- (a) Up to €322,500,000 term loan facility to be disbursed to the Parent Company to fund (i) in an amount of €265,000,000, the repayment of an existing upstream loan from Adler RE, provided that the proceeds are directly applied to fund the repayment of the Adler RE 2023 SUNs and (ii) in an amount of up to €57,500,000, to fund fees incurred under the New Money Funding;
- (b) €235,000,000 term loan facility to be made available to the Parent Company to fund a shareholder loan with 0 per cent. interest to Adler RE to fund the repayment of the Adler RE 2023 SUNs;
- (c) €80,000,000 term loan facility to be made available to Consus or certain property-owning subsidiaries of Consus to fund certain capital expenditures; and
- (d) €300,000,000 term loan facility to be made available to the Parent Company to fund a shareholder loan with 0 per cent. interest to Adler RE to fund the repurchase and/or redemption of the Adler RE 2024 SUNs and to be funded into an escrow account on the date of first utilisation under the New Money Funding.

5.12 The New Money Funding will be issued at a discount of 1 per cent. and will accrue payment-in-kind interest at a rate of 12.5 per cent. per annum. The Parent Company and certain of its subsidiaries will guarantee the New Money Funding and provide collateral which will also serve as collateral for the SUN Notes on a junior basis. Lenders under the New Money Funding

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will also be allocated a separable contingent value right instrument entitling holders to 25 per cent. of the equity value of the Group.

5.13 The provision of the New Money Funding is subject to the completion of the Plan, the implementation of the Proposed Amendments, the provision of the agreed collateral and other customary conditions. All SUN Noteholders were invited to participate in the New Money Funding during the period from 25 November 2022 to 14 December 2022. Subject to obtaining the requisite consents, the Plan Company will extend the deadline for Plan Creditors to participate in the New Money Funding.

5.14 The Group has agreed to pay the following fees in connection with the New Money Funding:

- (a) for each member of the SteerCo, a backstop fee equal to 3.00 per cent. of the initial nominal amount of such SteerCo member's initial total backstop commitment as of 25 November 2022;
- (b) for each lender under the New Money Funding, an early bird fee equal to 1.00 per cent. of such lender's new money commitment;³
- (c) for each lender under the New Money Funding, a fee in euro computed at the rate of 5.00 per cent. per annum on the undrawn, uncancelled amount of each party's New Money Funding commitment computed on a daily basis during the period commencing on 9 January 2023 for each New Money Provider that executed a Commitment Letter by that date or, if such commitment is made at a later date, the date of the applicable New Money Funding commitment⁴, and ending on the date of first utilisation under the New Money Funding (the "Ticking Fee"); and
- (d) for each lender under the New Money Funding, an original issue discount fee at the rate of 1.00 per cent. calculated on the initial nominal amount of the new money notes.

Ancillary Release

5.15 In addition to its effects *vis-à-vis* the Plan Company, the Plan also seeks to compromise certain liabilities of the Parent Company in relation to the SUN Notes by way of ancillary release. As detailed above at paragraph **Error! Reference source not found.** above, pursuant to the Parent Company Guarantees, the Parent Company guaranteed to the SUN Noteholders the due payment of all amounts to be paid by the Plan Company under the SUN Notes.

5.16 In the absence of such an ancillary release for the benefit of the Parent Company, following completion of the Plan, the SUN Noteholders could potentially claim against the Parent Company for any non-payment of the principal of, and interest on, the SUN Notes pursuant to the original, unamended terms and conditions of the SUN Notes. In turn, the Parent Company would then be entitled to claim for such amounts against the Plan Company under the Reimbursement Deed.

5.17 This resulting "ricochet claim" that would arise in favour of the Parent Company as against the Plan Company under the Reimbursement Deed would defeat the purpose of the Plan, since the Plan Company would ultimately remain (indirectly) liable for the very liabilities under the SUN Notes that were purportedly compromised by the Plan. As such, the Plan Company cannot effectively compromise the Plan Company's debts to the SUN Noteholders without also seeking to compromise their claims as against the Parent Company.

³ The early bird fee is currently only eligible to be paid to SUN Noteholders who entered into a Commitment Letter to provide New Money Funding on or before 2 December 2022. However, the Group is currently in the process of seeking requisite consents to extend the eligibility for such fee to all Plan Creditors who participate in the New Money Funding.

⁴ The Ticking Fee is currently subject to negotiation between the Group and the SteerCo.

WHITE & CASE

6. THE JURISDICTION OF THE ENGLISH COURT

6.1 Section 895(2) of the UK Companies Act 2006 provides that 'company' means "any company liable to be wound up under the Insolvency Act 1986". The Plan Company is a private limited company incorporated in England and, as such, falls under the jurisdiction of the English Court.

Discretion

6.2 The convening hearing with respect to the Plan took place on 24 February 2023. By its judgment dated 27 February 2023, the English Court accepted jurisdiction and granted leave for plan meetings to be convened for the purpose of Plan Creditors voting upon the Plan.

6.3 The Plan Meetings took place on 21 March 2023, with the majority of the six classes of Plan Creditor voting in favour of the Plan, as follows:

Series	% in favour (of voting Plan Creditors)	% against (of voting Plan Creditors)
2024 SUNs	98.50	1.50
2025 SUNs	92.93	7.07
Jan 2026 SUNs	95.00	5.00
Nov 2026 SUNs	91.97	8.03
2027 SUNs	80.68	19.32
2029 SUNs	62.28	37.72

6.4 At the forthcoming 'sanction hearing' (scheduled to take place between Monday 3 and Wednesday 5 April), the Court will consider whether or not to exercise its discretion to approve the Plan.

10.2 Appendix 2 – Real Estate data request lists

NO	INDEX ENGLISCH	COMMENT	DOC-TYPE
01	Cadastre		
01.01	Cadastral Map	Please provide the most recent extract from the official cadastral map. If the most recent document is older than 3 months at the time of the planned data room opening, please also request a new document.	Authority information
01.02	Cadastral Register	Please provide the most recent excerpt from the real estate register (= list of the individual parcels and their area, prepared by the real estate/cadastral office). If the most recent document is older than 3 months at the time of the planned data room opening, please also request a new document.	Authority information
02	Land Register		
02.01	Land Register	Please provide the most recent land register extract. If the most recent document is older than 3 months at the time of the planned data room opening, please also request a new document.	Authority information
02.02	Encumbrances in Land Register	Please check whether the corresponding grant documents are available for all registered easements in Section II of the land register (cross corner with index point 02.01). If not, please request documents.	Authority information
03	Building Restriction Register		
03.01	Building Restriction Register	Please provide the most recent excerpt from the register of building encumbrances (not available in the federal states of Bavaria and Brandenburg). If the most recent document is older than 3 months at the time of the planned opening of the data room, please also request a new document.	Authority information
03.02	Agreements with Neighbours	Please provide permanently relevant neighbourhood agreements, consents if existing (no temporary consents for completed measures such as excavation pits etc.). Otherwise, please provide data room note/negative certificate.	Document(s) / DR-Annotation
4	Building Law		
04.01	Information on Building Law	Please provide the latest excerpt from the development plan (plan section AND text section). If there is no development plan for the property, please provide the latest planning law information from the authority on buildability in accordance with § 34 BauGB. If the most recent document is older than 3 months at the time of the planned opening of the data room, please also request a new document.	Authority information
04.02	Building Permits	Please provide all building and usage permits relevant to the property along with all attachments (original building permit, lectures, changes of use, building applications, exemptions, notifications of completion, official acceptances, green-stamped planning documents, test statics, etc.).	Document(s)
04.03	Verification of Parking Space	Please provide transfer agreements with the city, if existing. Otherwise, please provide current proof of parking space (to be extracted from building permit(s) in index item 06.02, if applicable).	Document(s)
04.04	Statutory Area	Please provide the latest information from the authorities on the location of the property within the perimeter of a reallocation, redevelopment, development and/or conservation statute. If the most recent document is older than 3 months at the time of the planned opening of the data room, please also request a new document.	Authority information
04.06	Fire Prevention	Please provide all documents on the subject of fire protection (fire protection concept, inspection reports, notices of defects, expert opinions, official requirements, etc.).	Document(s)
04.07	Urban Development Contracts	Please provide public development contracts and other urban development contracts and concepts, if existing. Otherwise, please provide data room note/negative certificate.	Document(s) / DR-Annotation

NO	INDEX ENGLISCH	COMMENT	DOC-TYPE
5	Technical Documents		
05.01	Property Description	Please provide current (construction) description of the object (if necessary, extract from building permit).	Document(s)
05.02	Building Layout	Please provide current floor plans, views and sections of the property. Please check whether a current floor plan is available for each floor.	Document(s)
05.03	Site Area	Please provide the current area layout/calculation. If in doubt, please check that it is up to date.	Document(s)
05.04	Technical Installations and Certificates	Please provide a list of the technical installations together with the current test certificates. If no current test certificate is available, provide the latest available version and request a new document.	List & Document(s)
05.05	CapEx	Please provide maintenance budgets / CapEx statements.	List
6	Warranty Claims		
06.01	Warranty List	Provide the owner's list of trades currently still covered by warranty claims together with collateral.	List
06.02	Building Contracts	Cross-check with index points 08.01, 08.03 and 08.04. Please only provide construction contracts currently still covered by warranty claims (trade acceptance usually no more than 5 years ago, 10 years in the case of roof and truss). If unclear, have completeness checked.	Document(s)
06.03	Warranties	Cross-check with index points 08.01, 08.02.08.04. Please only provide current warranty bonds (associated trade acceptance usually no more than 5 years ago, 10 years for roofing and cladding). Please do NOT provide rental contract guarantees in this index item. If unclear, have completeness checked.	Document(s)
06.04	Acceptance of Construction Work	Cross-check with index points 08.01, 08.02 and 08.03. Please only provide VOB/BGB acceptance of works for construction measures that are currently still covered by warranty claims (acceptance usually no more than 5 years ago, 10 years for roofing and cladding).	Document(s)
7	Sustainability		
07.01	Energy Certificate	Please provide consumption or demand-oriented energy certificate.	Document(s)
07.02	Further Certificates	Please provide the sustainability certificate of the property (DGNB, LEED, BREEAM etc.), if available. Otherwise, please provide data room note/negative certificate.	Document(s) / DR-Annotation
8	Third Party Reports		
08.01	VDD	Please provide all existing certificates for the index point, if available. Otherwise, please provide data room note/negative certificate.	Document(s) / DR-Annotation
08.02	Further Relevant Reports	Please provide all existing and relevant appraisals for the property, if available. Otherwise, please provide data room note/negative certificate.	Document(s) / DR-Annotation

NO	INDEX ENGLISCH	COMMENT	DOC-TYPE
9	Environment Situation		
09.01	Site Contamination Cadastre	Please provide the most recent extract from the register of suspected contaminated sites. If the most recent document is older than 3 months at the time of the planned opening of the data room, please also request a new document.	Authority information
09.02	Site Contamination Reports	Please provide any contaminated site reports and any other documents relevant to contaminated sites, if available. Otherwise, please provide a data room note/negative certificate.	Document(s) / DR-Annotation
10	Tenants		
10.01	Rent Roll	Please provide a current list of tenants. If the most recent document at the time of the planned data room opening is older than 1 month, please also request a new document.	List
10.02	Operating Statements	Please enter current service charge analysis (subdivision into apportionable and non-apportionable service charges). Please do NOT provide individual service charge statements under this index item.	List
10.03	Table of Rent Arrears	Please provide a current list of open items. If the most recent document is older than 1 month at the time of the planned data room opening, please also request a new document.	List
10.04	Table of Rent Reductions	Please provide a list of rent reductions. If the most recent document at the time of the planned opening of the data room is older than 1 month, please also request a new document.	List
10.05	Table of Rent Securities	Please provide a list of the rental collateral. If the most recent document at the time of the planned opening of the data room is older than 1 month, please also request a new document.	List
11	Property Management		
11.01	Management Contracts	Please provide asset, property and/or facility management contracts together with the respective service specifications.	Dokument(s)
11.02	Maintenance- and Service Contracts	Please provide the current list of maintenance and service contracts together with the corresponding contract documents.	List & Dokument(s)
11.03	Supply- and Disposal Contracts	Please provide a current list of the supply and disposal contracts together with the corresponding contract documents.	List & Dokument(s)
12	Insurances		
12.01	List of Insurances	Please provide the most up-to-date list of property-related insurances.	List
12.02	Insurance Contracts	Please provide policies and cover notes as listed in index item 14.01.	Dokument(s)

NO	INDEX ENGLISCH	COMMENT	DOC-TYPE
13	Public Charges		
13.01	Real Estate Tax	Please provide current property tax assessment notice (may not be issued annually by authority).	Document(s)
13.02	Tax Assessment Value	Please provide the most recent notice of assessed value.	Document(s)
13.03	Municipal Charges	Please provide all other current fee notices (waste water, refuse etc.).	Document(s)
13.04	Development Charges	Please provide the current development cost contribution certificate from the civil engineering office. If the most recent document is older than 3 months at the time of the planned data room opening, please also request a new document.	Authority information
13.05	§ 15a UstG	Please provide a list of the tenants' entitlement to deduct input tax or a negative certificate.	List / DR- Annotation
14	Legal Proceedings		
14.01	Litigation with Tenants	Please provide the most recent list of legal disputes with tenants. Otherwise, please provide data room note/negative certificate.	List & Document(s) / DR- Annotation
14.02	Litigation with Third Parties	Please provide the most recent list of legal disputes with other third parties (building trades, neighbours, etc.). Otherwise, please provide data room note/negative certificate.	List & Document(s) / DR- Annotation